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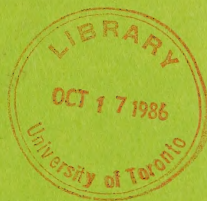
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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

MONDAY 25 SEPTEMBER 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions:

Callahan, Robert V. (Brampton South L) for Mr Lipsett
Cooke, David R. (Kitchener L) for Mr Brown
Cunningham, Dianne E. (London North PC) for Mrs Marland
Farnan, Michael (Cambridge NDP) for Mr Wildman
Haggerty, Ray (Niagara South L) for Mr McGuigan

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Drummond, Alison, Research Officer, Legislative Research Service

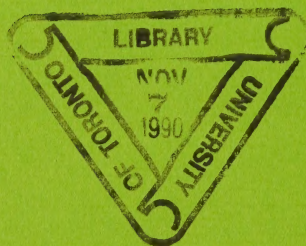
Witnesses:

From the Ministry of Consumer and Commercial Relations:

Sorbara, Hon Gregory S., Minister of Consumer and Commercial Relations
(York Centre L)

Tappenden, Eric C., Director, Business Regulation Branch

Webber, Bernard, Assistant Deputy Minister, Business Practices Division



LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 25 September 1989

The committee met at 1008 in room 151.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order. We are meeting this week and next week to consider Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

It was agreed by members of the committee prior to the summer recess that we would spend this week on public hearings for the bills and next week on clause-by-clause deliberation to propose any amendments to the two bills, and that at the very end, on the last day, Thursday 5 October, the committee would set aside one hour in which to discuss the next business of the committee when the Legislature returns.

No jokes will be allowed in the next two weeks on these bills. That is just a warning.

Mr Callahan: Putting a lid on it, are you?

The Chairman: We have with us this morning the Ministry of Consumer and Commercial Relations. The minister, the Honourable Gregory Sorbara, is here. The last time this committee met to consider a bill of some impact, it was also the minister under a different hat, under the Ministry of Labour. Minister, welcome to the resources development committee. We look forward to your comments.

Hon Mr Sorbara: Thank you, Mr Chairman and members of the committee. It seems like it is all the same players around the room. The scripts are somewhat different.

The Chairman: Did you say crypts?

Mr Callahan: Cut that out.

Hon Mr Sorbara: The scripts have been changed. This is me as a minister, you as a committee, our second performance. I expect that this one will be somewhat different from the others, but I for one am glad to be back here before this committee. I know how hard the committee worked in the spring-summer session and I expect that you will working as hard as that during this session, but I hope it is not all devoted to these two important pieces of legislation.

Before I begin my comments, I want to introduce to my right—your left, Mr Chairman—the assistant deputy minister for business practices in the Ministry of Consumer and Commercial Relations, Bernie Webber, and to my left

and to your right, the director of the business regulation branch, Eric Tappenden.

I propose to make some introductory comments first, as is now the standard practice when you undertake this kind of consideration of bills. Subsequent to that, Eric Tappenden will be presenting a somewhat more detailed analysis of the two bills, during which time I think he, and of course I, will invite members of the committee to interject and pose questions.

My remarks are not too long and the presentation is not too long so I think we are going to be able to accomplish a great deal in the time that we have set aside for this morning.

As I said, it really is a pleasure to appear again before this committee to speak in support of proposed bereavement legislation that will ensure, in our view, a more equitable and effective marketplace for consumers, business and nonprofit groups through improved access to information and services.

Je suis heureux que le comité nous offre l'occasion de discuter de ces importantes mesures législatives visant à protéger les consommateurs. Les membres de l'Opposition ont déjà formulé des commentaires positifs sur les projets de loi. C'est avec plaisir que je les étudierai plus en détail avec eux. J'attends également des commentaires constructifs de la part des différents groupes d'entreprises ou de consommateurs qui participeront aux audiences.

The Funeral Directors and Establishments Act and the new Cemeteries Act were first released as draft bills during the 1989 spring legislative recess by my predecessor Bill Wrye. As my colleague had hoped, the draft bills generated considerable interest. Following consultation on the proposals, Bill 30—Mr Chairman, I nearly said Bill 162—and Bill 31 were introduced with some technical changes in the Legislature on 12 June.

Introduction of the bills did not mean an end to the consultative process. Ministry staff, and I as well since my appointment as minister, have been holding meetings and hearing representations from a wide variety of interest groups and others concerned with the bereavement industry.

In my role as the new Minister of Consumer and Commercial Relations, I have listened as closely as I could to the views expressed and have examined the proposed legislation as carefully as I could. As a result of these discussions, I am convinced that the principles and directions set out in these bills are sound and necessary if we are to ensure an equitable marketplace, and surely that should be our objective.

I also want to inform the committee that in response to some of the concerns that have been raised since the bills were introduced, I will be proposing a limited number of amendments to Bill 30 and Bill 31. These will be described later in my remarks.

But this most recent consultation is, of course, only part of the extensive review that has gone on and gone into the development of this new and improved legislation. Over the past few years, the Ministry of Consumer and Commercial Relations has met with a wide variety of consumer groups and industry representatives, heritage and religious groups and interested individuals.

As you will know, Ontario's consumer protection laws were examined

recently by the legislative review project. I think all of you are familiar with that undertaking. With a mandate to bring forward proposals that would assist in the development of a new consumer protection strategy for Ontario, the legislative review project reviewed each piece of consumer legislation administered by my ministry's business practices division.

The review project thoroughly researched and reviewed the trends and issues affecting the bereavement sector, and I can safely say that everyone who wished to be heard was heard. The legislative proposals which are before you now are the result of these discussions and reflect the valuable information and insights that they have brought to the ministry.

Before I begin discussing specifics about the two bills, I would like to provide committee members with some background on the bereavement marketplace. The cemetery sector has traditionally been dominated by nonprofit, religious or volunteer organizations. In recent years, however, commercial cemeteries have become more common and in fact now have about 20 per cent of market share.

In the funeral services sector, small family-owned businesses have become less prominent in the marketplace with the growth of large commercial operations and there is increasing competition in the marketplace, particularly in urban areas.

Ces transformations, ajoutées au fait que les consommateurs sont de plus en plus avertis, ont entraîné d'importants changements dans l'industrie des services funéraires. Les consommateurs veulent une plus grande liberté d'action. Ils désirent qu'on leur offre un plus grand choix de services et la possibilité d'acheter un cercueil peu dispendieux et d'avoir des funérailles de base.

Another important factor to consider when looking at the death care marketplace is the changing multicultural mosaic of our society. No longer do all Ontarians want to purchase traditional funeral and cemetery services. Cremation, for example, is becoming increasingly popular and embalming is at odds with many peoples' beliefs, religious and otherwise. This province's bereavement legislation must address these demands if it is going to be relevant to today's needs. It is also becoming more common for people to prearrange their own funerals. This can lessen the burden on families at the time of bereavement and ensures services are adequately paid for when needed.

These are some of the major trends that have put increased responsibility on the government to implement legislation which will address these modern realities and ensure that the consumer is adequately protected at what we all understand is a very stressful and sensitive time in his life.

In terms of consumer complaints received at my ministry, we have seen an increase in the seriousness of the complaints. More and more we are hearing of aggressive sales tactics, excessive pricing and, indeed, misrepresentation.

Comme vous pouvez le constater, la nécessité de promulguer une meilleure législation sur les services funéraires est très évidente. En outre, la diversité des questions et des problèmes liés à l'industrie des services funéraires a rendu difficile l'élaboration d'une législation qui assure la protection du consommateur, tout en favorisant une saine concurrence dans l'industrie.

Néanmoins, je crois que les deux projets de loi soumis au comité répondent de façon adéquate au besoin de réglementer l'industrie afin d'offrir une meilleure protection aux consommateurs de l'Ontario.

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Both the funeral services sector and the cemetery sector have their roots in the area of health care and originally reported to the Ministry of Health. But in recognition of the increasingly large amounts of money being held in trust for pre-need services, the Prearranged Funeral Services Act was put into place and responsibility for protecting these trust funds was transferred some time ago to the Ministry of Consumer and Commercial Relations.

At present, by the way, there is some \$260 million held in trust for prepaid funeral services and more than \$151 million in cemetery care and maintenance funds. Cemeteries also hold some \$26 million in pre-need assurance funds. So the passage of the Funeral Directors and Establishments Act will complete the transfer of regulatory responsibility for funeral services from the Ministry of Health to the Ministry of Consumer and Commercial Relations.

Since the consumer ministry already regulates cemeteries, prearranged funerals and other legislation primarily provided for consumer protection, it is appropriate for funeral services legislation to be with us as well. But I want to make clear that the transfer in no way diminishes the importance of the health, social and environmental issues connected with bereavement services and, of course, the very human dimension of those services as well. I can assure the committee that the Funeral Directors and Establishments Act respects these concerns.

Now I would like to mention some of the highlights of the proposed legislation, on which you will hear more detail from Eric Tappenden shortly. First, the bills focus on improved consumer protection. Provisions include:

1. A requirement that fully itemized price lists on services and supplies be made available to the public and that reasonable information must be provided over the telephone upon request.
2. Requirements that funeral establishments offer a basic, low-cost funeral and that consumers be guaranteed the right to purchase a nontraditional funeral.
3. The changing multicultural diversity of Ontario has led to licensing recognition of two categories of funeral directors, and that is new in these bills. The two categories are those who perform embalming and those who choose not to embalm.
4. It is also required that all money paid to a cemetery or a funeral establishment for pre-need services be held in trust, and it provides that all pre-need contracts may be cancelled, at no cost to the consumer, within 30 days of signing.
5. A requirement that cemeteries must repurchase unused lots at the request of the consumers.

L'efficacité de la réglementation en matière de cimetières sera assurée par l'obligation qu'auront tous les cimetières et les représentants des ventes des cimetières commerciaux d'être titulaires d'un permis et par la nomination d'un registraire qui sera chargé de l'application de la nouvelle loi. De plus, au sein du ministère, la section actuelle des cimetières sera restructurée pour satisfaire aux exigences de la nouvelle loi.

Afin d'assurer que les consommateurs pourront continuer à profiter d'un

choix de services et qu'une saine concurrence existera au sein de l'industrie, les nouvelles mesures législatives maintiennent et clarifient l'interdiction actuelle d'exploiter à la fois un établissement de pompes funèbres et un cimetière.

For the first time, operational connections will be clearly defined and will include, for example, joint marketing, referral selling and common directorships. The regulations will also prohibit the location of funeral establishments and cemeteries on the same site. These prohibitions will be strictly enforced by my ministry once the bills become law.

The marketing of death care services is an issue this ministry has looked at very closely. During the consultation process, considerable attention focused on door-to-door and telephone solicitation. There is no question that this type of marketing presents the unavoidable risk that the ill or recently bereaved may be, inadvertently or not, contacted. Our new legislation, as you know, prohibits all telephone and door-to-door solicitation for funeral and cemetery services.

Included in the Funeral Directors and Establishments Act regulations will be the establishment of a prepaid funeral services compensation fund. The fund will reimburse consumers should they be unable to obtain funeral services for which they previously arranged due to defalcation, closure or bankruptcy of the establishment.

As I indicated earlier, the consultative process for these bills has been extensive and thorough. Since my appointment, I and certainly the ministry for a number of years have listened closely to the comments and concerns of industry participants and interest groups. In response to the concerns that we have heard, I will be proposing some amendments to Bill 30 and Bill 31.

The amendments reflect the suggestions made by such groups as the Commonwealth War Graves Commission, the Chiefs of Ontario, the Federation of Ontario Memorial Societies and the Consumers' Association of Canada (Ontario). Just to give you an example or two, I will recommend amendments to subsection 32(1) of the Funeral Directors and Establishments Act to ensure that no pre-need contracts can be signed which eliminate cancellation rights of the purchaser or the purchaser's designate.

To ensure safe and sanitary conditions in funeral establishments, it is also my intention to include a specific reference to "hygienic practices" in paragraph 46(1)33. Although I am advised by officials that "hygienic" is not technically necessary, we do not want any misunderstandings about health-related issues in this sector.

Le projet de loi 31 sera aussi amendé afin d'assurer que le droit qu'a un propriétaire de fours crématoires de refuser d'incinérer un corps soit assujéti à des conditions raisonnables qui seront prescrites par les règlements. Même si, d'après la Charte des droits et libertés, un refus non raisonnable serait probablement illégal, cette disposition visera à éviter que les propriétaires de fours crématoires fassent de la discrimination.

Le projet de loi 31 sera en outre amendé pour qu'il soit clairement établi que le ministère des Affaires des anciens combattants et la Commonwealth War Graves Commission soient des entités distinctes.

To alleviate concerns expressed by heritage groups and the Ministry of

Culture and Communications with respect to cemeteries designated as heritage sites under the Ontario Heritage Act, section 87 of Bill 31 will be changed by way of an amendment proposed here to limit the reference to the part of the heritage act dealing strictly with archaeology. The Ministry of Culture and Communications' interest in conservation of sites designated as having heritage significance will not be affected.

As a point of interest, following representations from the Chiefs of Ontario, the reference to "Canada's aboriginal peoples" in the Cemeteries Act will be replaced with a more appropriate term: "aboriginal peoples of Canada." I think you all understand the significance of that choice of phrase rather than the one originally prescribed in the bill. A number of other amendments, all of which are technical in nature, are also planned and will be discussed during clause-by-clause review.

In developing this important legislation, we have worked to regulate a complex industry fairly and to assist all bereavement sector participants in responding effectively to the changing needs of consumers. I believe, even in my short time as Minister of Consumer and Commercial Relations, that the well-rounded nature of Bill 30 and Bill 31 clearly demonstrates the government's commitment to a fair and equitable marketplace for all of those concerned.

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As I said at the beginning, it is a pleasure and a delight to be back before this committee. Thank you for giving me an opportunity to make some introductory remarks. With your permission and the permission of the committee, I would now ask Eric Tappenden, as director of the business regulation branch, to proceed, with the help of some slides, with a more thorough analysis of both Bill 30 and Bill 31.

The Chairman: Just before we turn it over to Mr Tappenden, Mr Farnan, you had a question or a comment?

Mr Farnan: I have a comment I would like to direct to the minister. Thank you for your presentation. We wish you every success in your work within this ministry. Obviously we are here to have a mature reflection and discussion of this legislation. In your final summation, you mentioned that there are a number of amendments, which you described as maybe technical in nature.

I believe it is in the best interests of the proceedings that if you indeed have amendments and they are formulated, they should be tabled at this time. They may be, perhaps, minor amendments, but it is always best, I believe, to put our cards on the table. Anything else can give the impression of a cloak-and-dagger approach to the proceedings. I would request of you that whatever amendments are available, they be tabled with the committee as of today so that all of the members of the committee have a chance to reflect on them and see where they fit into the overall picture.

Hon Mr Sorbara: I think my friend and my new critic raises a very good point. As I said in my remarks, I referred to some of the amendments. There are some additional technical amendments that I did not refer to. I think probably the paperwork of binding those amendments is almost complete and I would undertake at this time to get those to the committee as soon as possible.

We certainly did not want to burden you with them today because of the

amount of paperwork and the fact that there will be presentations being made by a number of deputants before the committee. But, I repeat, I will give my undertaking to present those just as soon as they are printed and in a form fit for presentation to the committee. I should think that would be in the next day or two.

The Chairman: We can proceed, then, with Mr Tappenden. Just a word: The cameras and the microphones have a little trouble with the projector—the noise, the fan and so forth—so if we can keep the number of questions to a minimum. There may be some point when you will have to ask a question for clarification; that is fine. It is better if we can wait until the end for any detailed questioning of Mr Tappenden as he goes through his presentation.

Mr Wiseman: Could I just ask for a clarification on page 3 at the bottom? We understand the \$260 million held in trust for the funeral services and the \$151 million for cemetery care, but the last one: "Cemeteries also hold \$26 million in pre-need assurance funds." What is that?

Hon Mr Sorbara: Perhaps I will ask Eric Tappenden to answer that and give you the specific definition of what that is.

Mr Tappenden: The pre-need assurance funds that cemeteries hold in trust are the equivalent to the \$260 million that funeral establishments hold in prepaid funeral trust funds. They are essentially prepayment for burial arrangements, as the \$260 million is prepayment for funeral arrangements. The \$151 million that you see as care and maintenance funds are now referred to under the current law as perpetual care funds.

They result from a percentage of every lot price that is paid in Ontario when a lot is purchased in a cemetery. That money is put into trust and the income from that money is used to maintain the cemetery. That is capital. The capital of that trust fund may not be accessed by the cemetery, unlike the \$26 million which is accessed when the services are provided.

Mr Wiseman: Are they required to put that \$151 million in a guaranteed interest-drawing account like they are for the prearranged funerals?

Mr Tappenden: Yes. The current law provides that a cemetery must place the perpetual care money with a trustee, which may be a trust company or the public trustee. There are exemptions under the current act for a number of groups, religious and nonprofit groups largely, who manage their own trust funds. We are proposing to limit those exemptions under the future bill to make for a more level playing field.

The Chairman: Anything further from the members of the committee? If not, Mr Tappenden, we are at your pleasure.

Mr Tappenden: Rob Harper of our staff is going to be moving the slides for us this morning.

Mr Chairman, members of the committee, it is a pleasure to be able to give you an overview of the provisions of the two bills. We will keep the presentation as brief as possible, to allow as much time for questions at the conclusion.

The first thing we would like to do is to expand on the minister's overview of the sectors involved to give you a sense of the sectors which are being regulated here. Overall, the bereavement or death care sector in Ontario

does in excess of \$400 million worth of business a year. Over half of that is through funeral homes, over a quarter of it is in cemeteries, and about \$50 million of that is in monument sales. There are just over 70,000 deaths annually in Ontario. That is expected to double within the next 35 years with the ageing population.

Looking at the funeral sector specifically, there are at present 528 funeral establishments across the province, and 1,400 active, licensed funeral directors.

As the minister mentioned, there is in excess of \$250 million in trust for prepaid funerals. The major corporate entities in the marketplace in Ontario are Trillium Funeral Service Corp, which is a subsidiary of Arbor Capital Resources Inc, which at last count had 16 establishments. I should say that since these figures were compiled there have been even further acquisitions, so the numbers may be slightly out of date. Those 16 establishments have roughly about four per cent of the market share across the province.

The Vancouver-based Loewen Group Inc has now actually 16 establishments which will account for in excess of five per cent of the market share, and Texas-based Service Corp International has three establishments and approximately one per cent of the market share.

There are about 20 ancillary businesses to the funeral sector, including transfer services, trade embalmers and removal services. Transfer services deal directly with the public, and they provide a very basic service of transporting the body and filing documents. Trade embalmers act as a support service to funeral directors, and removal services do the same.

Moving on to the cemeteries and crematoria sector, there are over 2,800 operating cemeteries that we know of in the province, and there are about 2,000 inactive cemeteries, that is, those no longer accepting interments. Of that, about 40 cemeteries, or about one per cent of the total, are commercial cemeteries. The largest of the commercial cemetery operators in the province is Memorial Gardens Canada Ltd, which is also a subsidiary of Arbor Capital. They have about 15 per cent of the market share, with 20 locations. Overall, the commercial sector, although representing just one per cent of the cemeteries, has about 20 per cent of the number of interments in the market share.

The remainder of the cemeteries in the province are nonprofit, with the majority being religious and municipally owned. The largest nonprofit, nonsectarian group is Toronto Trust Cemeteries, which has about 60 per cent of the Toronto market in nine locations. The largest religious group of cemeteries is the Ontario Catholic Cemeteries Conference, which has about 430 locations, followed by the United Church with about 320 locations.

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There is a total of 37 crematoria around the province, all of them located, as the law currently requires, on cemetery property.

As the minister mentioned, there is in excess of \$150 million out there in trust funds in what are now called perpetual care funds, what the new bill calls "care and maintenance funds," and in excess of \$25 million in pre-need burial funds or pre-need assurance funds. The monument sector, as well as cemeteries and funeral establishments, many of them selling monuments—there

are about 115 monument retailers and about four manufacturers or wholesalers in the province.

Just to give you an idea of average costs to consumers—these are very rough and they are clearly averages—the average traditional funeral across Ontario today costs about \$3,500, the average cost of a transfer service is about \$500, and the average cost of a cremation is about \$200. Cemetery lots and fees vary quite markedly across the province, partly in relation to geography and partly in relation to the profit-nonprofit status of the cemeteries. Typically, in a rural area in Ontario, one pays about \$100 to \$200 for a cemetery lot, and in urban areas from about \$600 to \$900. The opening and closing service which cemeteries provide typically costs \$100 to \$150 in rural Ontario, and in larger urban centres roughly double that. Monuments: again, these are clearly averages and do not in any way reflect the upper limits, but for a flat marker one can pay from \$500 to \$1,000 to \$1,500. Upright monuments, modest ones, can typically cost \$2,000 to \$4,000.

Mr Wiseman: Just before you go on, if the average funeral is \$3,500, what would the top end be? Any idea?

Mr Tappenden: I would not hazard a guess as to the top end, but it is not uncommon to hear of consumers talking about \$5,000 or \$8,000 for a funeral with, if you will pardon the expression, all the trimmings.

Mr Wiseman: I just wondered, because I thought it was much higher than \$3,500 for the average.

Mr Tappenden: Frequently the figures of, say, \$10,000 that are referred to reflect not only the cost of the funeral but the cost of the burial, the lot and the monument as well, so typically if you add up all the averages, even on that page, it could come to \$10,000 by the time the consumer is finished. Certainly the funeral portion of that can be considerably in excess of \$3,500.

Mr Callahan: What is the transfer service? Is that going from the church to the graveside, or is that bringing a body from across the country?

Mr Tappenden: Transfer services are a very new form of service to the public. There are currently three or four independent transfer services which operate in Ontario. They are essentially an alternative to the traditional funeral. Transfer services are not currently licensed by the Board of Funeral Services. They will offer to the public, for an average of \$500, to pick up the body from the hospital or wherever it happens to be and to transport the body to the crematorium or to the cemetery and to file the necessary documents, the coroner's certificate, the burial certificate and so on. So they provide a service to the public as an option to a traditional funeral.

Mr Callahan: I know it is defined in the act, but I just do not see the difference between that and the transfer from, say, someplace in Ontario to a local town where the burial is going to take place. Is that a transfer?

Mr Tappenden: Transfer services would do that. Funeral directors would also perform that function if asked. A transfer service, at least some of the transfer services we are aware of, in transporting the body to the crematorium or to the cemetery, will stop and leave the body at a place of worship for a memorial service or whatever, and then carry on to remove the body and take it to the crematorium after that.

Mr Callahan: Finally, if I could, how does one determine that that charge is not included in the \$3,500 or that average cost of the traditional funeral?

Mr Tappenden: It typically would be. As I say, transfer services as they are defined in the bill tend to be an alternative to a funeral service. A consumer would either go to a transfer service or to a funeral establishment. The transporting of the body and the filing of documents, which transfer services do, typically would be included in the \$3,500 if you were having a traditional funeral.

Mr Callahan: I do not mean to press this, but I would like to get it clear in my head. If I went through a traditional funeral and was bringing a body from, say, Manitoba, and I did not hire a transfer agent but the funeral director did hire a transfer agent, when I got my bill would it show me being charged extra for that?

Mr Tappenden: No. Typically, if you were looking after funeral arrangements for someone who died in Winnipeg and you wanted the body transported to Toronto for the funeral, the price that the funeral director would quote you would include the cost of transporting the body.

As I say, typically, when one goes to a funeral establishment, in a traditional funeral one would contract for embalming of the body, casket, use of a viewing room, use of the limousines, transporting the body, filing the documents and any kind of counselling service that may be provided, all of those things in a traditional funeral from a funeral establishment.

As an alternative to that, there are new companies cropping up that say, "We will provide you with the very basic service." You do not go to a funeral establishment if you want that service. You go to a transfer service and say, "We really just want the body transported and the documents filed and none of the other parts of the funeral." So you can go to a transfer service or a funeral establishment.

Mr Callahan: Finally, so I understand it, if there were a prearranged funeral and a set fee paid and the body had to be transferred from Manitoba to here, obviously there would be an additional collection.

Mr Tappenden: If that was not part of the prearranged contract, yes.

Just briefly, to expand on the minister's comments about why new legislation is being put forward, the Cemeteries Act and the Funeral Services Act currently are out of date and very difficult to administer. The Cemeteries Act dates back to 1913 and was most recently amended in any significant way in 1955. As you all know, many, many things have changed since the mid-1950s. They are very cumbersome for cemeteries, funeral establishments and consumers, as well as for us in government to administer.

As an example, in order to close a cemetery and disinter the remains and have them relocated, there is currently a process that one has to go through of getting two orders in council to allow that to happen, and all kinds of steps en route to that. So the acts need to be updated.

Along with that and very much a part of that, as the minister indicated, there is increasing multicultural diversity in our society and tied to that, changing funeral and burial practices and preferences. The minister cited the increase in cremation, which in Ontario is now up to 31 per cent of all

deaths. The marked increase in cremation in the last 15 years has meant that the number of crematoria and the kind of service both funeral establishments and cemeteries provide is changing.

The minister also mentioned that a number of groups find the practice of embalming not to be a part of their culture, a part of their beliefs or their traditions, so things like that have caused us to say that the changing practices and preferences require that the acts be updated to reflect those changes.

There have been in the last few years considerable allegations of consumer abuse and unfair business practices, and these have been in all three of the subsectors. Through our investigations and so on, we have confirmed that there have been a number of consumer abuses. Although people generally are reluctant to complain in this area, much more than they would be about something like car repairs, the seriousness and the number of complaints have increased quite markedly. We certainly have some confirmation of the abuses and the practices being problematic.

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There have been some concerns expressed about the lack of available information for consumers to make informed decisions and choices. The public and consumer groups have made representation to us saying they want more information more readily available in order to comparison shop and in order to make informed decisions.

We have mentioned the evolving industry structure. There has certainly been a rapid increase in the number of commercial cemeteries. Cemeteries traditionally have been nonprofit, locally operated, voluntary, religious and municipal groups. There is a larger and larger share being commercially owned and operated.

In the funeral sector, there has been an increase in the number of funeral establishments that have traditionally been small, family-owned businesses that have been bought by commercial chains. Although many of them operate under the long-standing family name, they are owned by commercial chains.

There has been a considerable number of concerns about an unlevel playing field and I would say just about everyone we have spoken to in this sector feels that the playing field under the current legislation is quite unlevel. Not only are the rules different, but the application of those rules as the industry structure has evolved has meant that the playing field has been unfair to almost everyone in one way or another.

Last, there is some considerable concern that there is inadequate protection of the almost half a billion dollars in trust funds out there, which should be more carefully protected.

I would like to move on to specifically cover off some of the major points covered in the two bills, starting with the Funeral Directors and Establishments Act. In the area of licensing and administration, funeral establishments and funeral directors, which have traditionally been regulated by the Board of Funeral Services under the Funeral Services Act, will continue to be licensed by that board under the new statute. Also, transfer services, up until now unlicensed, will be licensed by the board under that act.

The act defines a "transfer service" as something that may provide for

the removal, transportation or delivery of human remains and the filing of the necessary documentation. A transfer service, to differentiate it from traditional funeral services, need not be under the direction of a licensed funeral director.

The reporting relationship of the board will be transferred from the Ministry of Health to the Ministry of Consumer and Commercial Relations. Appeals of board decisions will no longer be to the Funeral Services Review Board, but will be to the Commercial Registration Appeal Tribunal, a tribunal that hears appeals in a number of other regulated sectors in this ministry.

Individuals who meet the requirements of the act for licensing as funeral directors may now do so in two categories, those who perform embalming and those who choose not to perform embalming.

Mr Callahan: Could I just interrupt here for a second?

Mr Tappenden: Yes.

Mr Callahan: You say that a transfer service need not be under the direction of a licensed funeral director. Where is that in the act, or is it just that it is not in the act?

Mr Tappenden: The absence of a requirement in the act is such that there is not a requirement there. The act clearly states that someone running a funeral establishment must be a licensed funeral director. The requirement is not there for transfer services.

Mr Callahan: Would it not be better to put it in there for clarification?

Mr Tappenden: We can certainly consider that.

Mr Wiseman: How would the public be protected, that those people are good individuals who they should be dealing with, unless there is something in there to protect them?

Mr Tappenden: You raise a good point, Mr Wiseman. It is certainly something we have been discussing in our ongoing discussions about what will have to be covered in the regulations. The first point would be that the transfer service would have to be licensed by the Board of Funeral Services, and as a requirement for holding that licence, it will have to meet a number of conditions in terms of its premises and so on. They will have to be licensed as an establishment and the owners of that establishment will be accountable to the board.

Second, the Board of Funeral Services will have the power to set out licensing requirements in terms of training or other requirements for the owners of transfer services that may be somewhat less rigorous than those of funeral directors, but there is the possibility to establish those standards which have to be met.

Mr Wiseman: Will the funeral directors' board that sets out the regulations here set out the requirements of a transfer agent so that if there were a bad apple, they could take it away from him? Otherwise, there is no regulation.

Mr Tappenden: Clearly, the ministry will establish regulations that

set out the requirements, and the Board of Funeral Services will then administer those regulations. The provision is very clear in the legislation that where someone does not meet the standards in the act or the regulations, the board can pull his licence.

Mr Dietsch: Is it your view that one of the criteria that might be covered under the regulations would be the aspect you are referring to, embalming? Just exactly where will that fall in?

Mr Tappenden: Transfer services will not be allowed to perform embalming because they will not be trained or licensed to do so. However, funeral directors will be licensed to be either embalming funeral directors or nonembalming funeral directors. The criteria there will be elaborated on in regulation.

Mr Dietsch: You are proposing right now that provisions for a transfer service to provide the embalming aspects not be included.

Mr Tappenden: Yes. In the act itself, transfer services are limited to providing certain kinds of services, and the act states that only a licensed funeral director may carry out embalming because of the training required to do that. Transfer services typically will transport the body and file documents and will not be involved in other matters related to the preparation of the body.

Mr Dietsch: Let me ask you this question: Under the current situation, what takes place? Under the current situation, does the transfer service provide embalming?

Mr Tappenden: No. Under the current law, only funeral directors who are licensed by the board are allowed to provide embalming services.

Mr Dietsch: Is there a trade service that provides embalming now?

Mr Tappenden: Yes, there is. There are several trade services, which may employ only licensed funeral directors to do that embalming.

The Chairman: If someone dies in British Columbia and needs to be transferred to Halifax, is the embalming done by this trade person in BC?

Mr Tappenden: Quite possibly, yes. There are some jurisdictions that require, as Ontario does currently, that a body be embalmed before leaving the jurisdiction. There are many more jurisdictions in North America that do not have that requirement. They leave it to the carrier or the receiving jurisdiction to place that requirement, but typically, a body would be embalmed before it left to be transported to another area.

Mr Dietsch: Will you be getting to the point in your presentation in terms of dealing with those trade services? Will they be licensed or unlicensed? Will you be getting to that point?

Mr Tappenden: Yes. There is provision in the statute for trade services to be licensed.

Mr Tatham: I wonder, have there been abuses as far as the transfer services are concerned? You talk about bad apples. Have there been problems?

Mr Tappenden: We have had concerns expressed to us, not by the

public but from within the industry, that transfer services are carrying out activities which they perhaps are not permitted to do under the law, but we have had no concern expressed that transfer services are doing things like embalming and so on.

Mr Tatham: But as far as abuse is concerned, have they been abusing their activities?

Mr Tappenden: To my knowledge, we have had no consumer or public concern expressed to us that transfer services have been in any way abusing consumers, no.

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Mr Callahan: I do not want to belabour the point of transfer services, but I notice that under subsection 20(1), "A person may apply to the registrar for a licence to operate a funeral establishment or to operate a transfer service." Why would the provision be in there for them to apply for a licence if in fact they do not need a licence? Equally, what kind of sanction do you have if they perform their work badly?

Mr Tappenden: The current law does not provide for transfer services to be licensed. Essentially what has happened is that as an option to tradition funeral establishments, transfer services have cropped up. People have started running them. As a result of a court decision a few years back, the courts held that transfer services did not need to be licensed under the current act, that under the current act they were not providing funeral services and therefore did not need to be licensed.

What we have done in the new statute is to say that if transfer services, as a new kind of service out there, are going to operate, then we would like to see them licensed to have that control over their activities. Under the statute, if anyone wants to operate a transfer service, even those that already exist, he will have to apply for a licence. He will have to be licensed and that licence can be removed by the Board of Funeral Services if he does not meet the requirements under the act.

Mr Callahan: But they do not have to apply for a licence.

Mr Tappenden: They will under the new statute, yes.

Mr Callahan: Under this statute here?

Mr Tappenden: Yes.

Mr Callahan: What section? It just says "may apply."

Mr Tappenden: I believe elsewhere in the statute—maybe I can get a copy—in subsection 19(3) it talks about not being able to operate without a licence. Perhaps I can just look that up. "No person shall operate or imply that the person is available to operate a transfer service unless the person is licensed to do so."

Mr Callahan: Okay.

Mr Tappenden: Moving on in the area of consumer information and protection, the new Funeral Directors and Establishments Act provides that fully itemized price lists must be made available to the public. Reasonable

information must be provided over the telephone upon request, and we will be defining in regulation what that information is. Funeral establishments must display and offer a full range of caskets, including the lowest price available. Funeral establishments must make a basic service available.

As in the Cemeteries Act, which we will get to, telephone and door-to-door solicitation for the sale of funeral services or supplies will be prohibited.

Cemetery-funeral home combinations: The current statute, in section 13/1 of the regulations, does not allow funeral homes to be located on cemetery property, nor does it allow funeral establishments to be operated in connection with cemeteries. The proposed bill, the Funeral Directors and Establishments Act, will continue that policy and extend it to transfer services, so that funeral establishments and transfer services are prohibited from being operated in conjunction with cemeteries or crematoria or being located in prescribed locations.

These will now be not only in the regulations, but they will be contained in the bill itself. The regulations will define in some detail what those locations are, such as on cemetery property or appearing to be on cemetery property.

Mr Wiseman: Go back to, "Funeral establishments must display and offer a full range of caskets." When the former bill was brought through, there was some worry at that time that funeral directors sometimes prejudged the people who came in as to how much money they had, or they would take them into a room that had caskets of a certain value and never show them the full range.

We tried to get them to show them all in one room, right from the cheapest to the dearest so that they could not say: "Oh, well, do you want grandma in? You have to go into another room, a cheaper room." Was there any thought to that, to keeping them where they go in and see them all, rather than having them decide what room you should be in, whether it is the medium-priced or the high-priced or whatever, because there was some worry of that back in 1976 or 1978, whenever the other bill came in.

Mr Tappenden: This clause is really designed to ensure that consumers will have the best possible opportunity to see all of the products as easily as possible. We have not got down to defining in regulations yet whether it will be required that they all be in one room, but I would imagine that would be the kind of thing we would consider doing in regulations, to ensure that consumers could see the whole range including the bottom end as easily as possible and make their own choice as easily as possible.

Mr Wiseman: There was a lot of concern at that time that they took you into one room and then you felt slighted maybe if you felt you could not afford that and had to go into another room where they have funerals for indigents or whatever.

The Chairman: I happen to have been involved in funeral arrangements earlier this year and the room where the caskets were displayed had a full range, but the bottom, the lowest-priced casket, was so bad that it was in effect saying to the person, in this case the widow: "You really wouldn't want this one for your dearly departed, would you?" I guess there is only so much you can put into a bill. I left with not a very good feeling, I can tell you.

Mr Tappenden: The sections of the bill dealing with prepaid funerals

have been taken largely from the former proposed bill, the Prepaid Funeral Services Act from 1987, which was Bill 27. These have all been incorporated into the proposed act.

Funeral establishments and transfer services will be required to contribute to a compensation fund to compensate consumers in the event of a defalcation or a bankruptcy or a closure of an establishment. A board of trustees as a subcommittee of the Board of Funeral Services will administer the compensation fund and all prepaid contracts may be cancelled at any time prior to the services being delivered. If the contract is cancelled within 30 days of signing, no administration fee may be charged. After 30 days, a funeral establishment will be allowed to charge an administration fee. The trusting provisions have been tightened up in terms of how the money is to be trusted, how it is to be controlled and maybe withdrawn and so on.

Mr Wiseman: Is it the maximum of six months interest like the old bill, or—

Mr Tappenden: I am sorry. I do not understand your question.

Mr Wiseman: In the old bill, if you had taken a prepayment you had to put it in an interest-bearing account, and it said that the most a funeral director could charge for administration of that, if asked for the money back, was six months' interest, I believe. Most of them did not charge that, but they could charge up to six. Is this open ended, that he would say: "This is what I am getting for administrative—"

Mr Tappenden: No, we would be prescribing in regulation the amount charged. While no decision has been taken by the ministry yet on this, typically it would be a percentage of the total value of the contract, but it could be, considering the current provisions as well, a maximum amount based on the income from that deposit.

Mr Wiseman: I think it would make it simpler for everybody if you could only charge to a maximum of six months' interest, or none if you wanted good public relations with your customers.

Mr Tatham: I wonder if you would be kind enough, through the chair, to explain the "may be cancelled." What percentage will a person get back: five per cent, 10 per cent, 20 per cent? How much?

Mr Tappenden: Typically if someone paid \$5,000 for a prearranged funeral and that money was paid yesterday and they wanted their money back today or up to 30 days, the bill says you get all of your money back. Beyond 30 days, the funeral establishment can charge an administration fee. We would see that being a very small percentage of the actual value, so that typically you might, if the money had been in trust for 10 years and there was \$12,000 in the account now instead of \$5,000, you would probably get back, for the sake of illustration, 90 per cent of that.

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Mr Callahan: Of the \$12,000.

Mr Tappenden: Of the \$12,000, yes. You would get back 90 per cent of the total value of that fund. I say 90 per cent just for the sake of illustration. We would not be saying you would get back 10 per cent. It would be the bulk of that less an administration fee which would be designed to

reflect the cost to the funeral director of having managed that money for the 10 years, any trustee fees, any administrative costs. But clearly the bulk of the money, including income, would go back to the consumer.

We can move on to the Cemeteries Act. Under licensing and administration, there will be a new provision in the Cemeteries Act that all cemeteries and crematoria owners will be licensed and will pay fees. Currently, the Cemeteries Act provides that the registrar general may register cemeteries but, since 1913, that has never been carried out and we will be carrying out licensing of cemeteries and crematoria owners.

Also, sales persons employed by commercial cemeteries or those primarily engaged in the sale of cemetery lots and services working for nonprofit cemeteries will be licensed and bonded. The act will be administered by a registrar, who will exercise powers as set out in the act and regulations. It is very similar, in most respects, to the registrars of other regulated businesses that we have.

Decisions of the registrar, as in the Funeral Directors and Establishments Act, may be appealed to the Commercial Registration Appeal Tribunal. As well as licensing decisions, the registrar's consent to a cemetery's establishment is subject to prior approval by the local municipality. Under the current act, the local municipality makes a recommendation to the minister, who then allows for and approves the establishment of a cemetery.

We are putting more onus on the municipality to actually approve the establishment of a cemetery, subject to the registrar's consent. This really reflects the current practice whereby the municipality is relied on heavily to work out with the cemetery owner exactly what the grading, zoning and everything else will be and the ministry reviews to make sure all the documents are in order and then approved.

Decisions of the municipality may be appealed to the Ontario Municipal Board by any interested party to allow an avenue of appeal.

In the area of consumer information and protection, door-to-door and telephone solicitation for cemetery lots, services and supplies are prohibited. Reasonable information, including price lists, must be provided over the telephone upon request. Contracts will be required to disclose and contain certain information to be specified by regulation. Typically, any terms and conditions that the contract is subject to will have to be clearly disclosed so that consumers know exactly what they are buying.

Sales certificates, pre-need contract and cemetery bylaws will be subject to prior approval by the registrar. All pre-need contracts may be cancelled at any time prior to the supplies and services being provided. If the pre-need contract is cancelled within 30 days of signing, no administration fee may be charged.

Mr Callahan: Just along those lines, can you tell me what subsection 31(1) means when it says, "No licensee shall enter into a prepaid contract that contains a provision for the payment of interment rights in a cemetery lot"? Does that mean they have to be separately contracted?

Mr Tappenden: Yes. What happens when one buys a cemetery lot is that you do not buy it on a pre-need basis. When you buy a cemetery lot, you do not plan to necessarily use it right away but you inherit the rights to inter in

that lot at the time of sale. If you were, as a consumer, prearranging your burial and you went and typically paid, let's say, \$800 for the lot and \$400 for the opening and closing service to be carried out when the burial takes place, the \$400, under the new bill, would be trusted; 100 per cent of that money would be trusted and the cemetery could not access that money nor the income from that money until it actually did the burial.

However, the purchase of the lot is not done on a pre-need basis. You pay the \$800 and the cemetery puts in trust a certain portion of that for care and maintenance. The rest of it comes into its revenue stream at that time and you immediately inherit the rights. If you die tomorrow or 20 years from now, you have the right to inter.

Mr Callahan: I am not sure of that. In other words, if a funeral director tried to produce a prepaid contract that provided for payment of interment rights, that would be a contravention of that section. That is all that says.

Mr Tappenden: Yes. Are you looking at the Funeral Directors and Establishments Act?

Mr Callahan: Yes.

Mr Tappenden: Okay. I was thinking of the Cemeteries Act. You are looking at subsection 31(1). This essentially prohibits a funeral director from selling a prepaid burial. Forgive me for misunderstanding your question.

It ties into the provision that funeral establishments and cemeteries may not be operated in connection with one another. If someone wants to pay for interment rights, then he has to do that through a cemetery; he cannot do it through a funeral establishment. That is what that provision means.

Mr Callahan: You are actually entering into a contract with the funeral director, and then one with the cemetery.

Mr Tappenden: Yes. Typically, if you want to prepay both your funeral and your burial, you have to have two prepaid contracts.

Mr Wiseman: On the consumer information protection on this slide, was there any thought given to people who, say, prearrange a funeral or something and they give that—At the first, you mentioned that quite a chunk of business is owned by two or three different people, both the cemeteries and the funeral directors. Is there any thought being given to putting in a protection that if you sell them, say, the plot, the people who have an interest in the funeral arrangements cannot sell or give that to that group to go out and solicit a burial? I never noticed the monument end, but they could give it to all three they owned, if they happened to own all those.

In my area, I understand some are even getting out to insurance companies. They are going under the pretence of prearranged funerals, but they are selling term insurance to elderly people, who are probably paying an arm and a leg for it at their age. They are selling it as a prearranged funeral type of thing and selling, I understand, \$5,000 worth of insurance. That is why I asked you the question of what an upper limit on a funeral would be. There does not seem to be anything in here to stop people from selling those lists or giving the lists to other people, other connections that the people would never know anything about.

Mr Tappenden: You are quite right. There is no provision in either

of the bills to maintain any confidentiality of that information. As you would know, typically many businesses sell their mailing lists or their client lists to other businesses, and neither of these bills stands in the way of that practice.

One further comment with respect to the link between selling life insurance policies and selling prearranged funerals: the current Prearranged Funeral Services Act, which is in law now, allows either licensed life insurance agents or funeral directors to sell prearranged funerals.

The proposed Bill 30 restricts the selling of prepaid funerals to licensed funeral directors. We do not in any way want to stand in the way of people funding their prepaid funerals through insurance, but we have drawn the line that insurance salesmen can sell life insurance but only funeral directors can sell funerals. Referring someone to an insurance salesman to say, "If you want to pay for your funeral this way, you can do that, or you can pay us," we still allow for that, but we draw the line as to who can sell funerals.

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Mr Wiseman: Some of them have told their next of kin, "It's all looked after," and it really is not. They have set aside the money in the insurance, but it is not. With the prearranged funeral with your funeral director, you are getting the benefit of inflation because you are getting 10 per cent on your money, or whatever it is, and that \$10,000 you put in becomes \$12,000 before you need it, any increase, but in insurance policies it may not be that way. It may be the \$5,000 or \$10,000.

It bugs me when lists go out, particularly elderly people who may be suckered into a situation they should not be, buy the plot they should not be bothered with, somebody selling a prearranged funeral or whatever. In my case, in my area, some of them are even buying plots in Ottawa. If you live in Perth or Smiths Falls it does not make a lot of sense. They have lived there all their lives and they are trying to sell them but they cannot. I just thought that now that it was in Consumer and Commercial Relations, it would have protected them from that, or some way of protection.

Mr Tappenden: We will certainly have a look at that issue. You have raised a good point.

Mr Dietsch: They probably figure Ottawa has everything else they own, they might as well have that too.

Mr Wiseman: I hope you will consider that, though.

Mr Tappenden: Yes, we will certainly have a look at that.

The last point under consumer information and protection: Cemeteries must repurchase lots at the request of consumers. Typically, what happens now under the current legislation is that some cemeteries will repurchase unused lots and some will not. There is no law stating they have to.

There is a law, however, that says you may not sell a lot unless you are a cemetery, so if someone is moving to Vancouver and wants to dispose of a lot, he has to advertise in the paper, make an under-the-table deal with somebody and then go the cemetery and pay \$2 to have the rights to that lot transferred.

Some of the folks in the ministry refer to that affectionately as "trafficking in graves," which is really not in accordance with the law. The provision in the proposed bill really tries to deal with that by insisting that the cemeteries repurchase the lot at a formula to be set out in regulation, which will give the consumer some protection for the price he has put out but also does not penalize the cemetery owners.

The area of fair business practices: There are some specific provisions which state that cemetery owners may not unreasonably prohibit or discourage a purchaser from obtaining a monument from an outside source. There have been some complaints from both consumers and the monument industry about that. Second, cemetery owners cannot include clauses in their bylaws which unreasonably discriminate against outside suppliers, such as monument retailers. The accepting or paying of commissions for referring monument sales is prohibited unless the consumer is advised in writing of this practice.

In the area of public safety, as you may recall from a couple of years ago, we had a very tragic accident where a four-year-old girl was playing in a cemetery and a monument toppled over on her and killed her. There are a number of less tragic instances where someone is walking through a cemetery and the ground caves in under him and he breaks a leg, things like that, and so we have stressed public safety in the new statute.

Cemetery owners currently are responsible under common law for the maintenance of monuments. We are going to enshrine that responsibility in statutory law to demonstrate their responsibility for maintaining monuments. On the other hand, we are going to give them some tools in order to be able to handle that responsibility without a great deal of cost, such as providing that unstable monuments can be repaired, removed or moved to a different location, including being laid down by the cemetery owner. We will also be able to establish construction and installation standards for monuments in the regulations.

Under care and maintenance, the term "care and maintenance" replaces the term "perpetual care." The contributions that are made to that care and maintenance trust fund will be increased. The current provisions under the statute are, on the sale of a lot, a minimum of \$35 or 35 per cent of the value of the lot, whichever is the greater. A required levy on the installation of monuments will be deposited into the care and maintenance fund which is to be used to maintain monuments, as well as cemetery grounds.

In the area of trust accounts, moneys paid in advance for pre-need services and supplies are to be 100 per cent trusted. Provision is made in the act for regulations to make auditing requirements for both pre-need and care and maintenance trust accounts more stringent.

In the area of abandoned cemeteries, a court order declaring a cemetery abandoned may be sought by cemetery owners, municipalities or the registrar. Typically, under this current statute, it is provided that if a cemetery is abandoned it becomes the municipality's responsibility, but there is considerable discussion on frequent occasions as to whether or not a cemetery is abandoned, and this simply provides a legal process by which one can expedite the process.

The title, assets and trust funds of an abandoned cemetery will be vested in the municipality. Again, that is currently a problem in that it does not happen. The owners would be required to continue to maintain inoperative sites if sufficient revenue is being generated by other cemeteries they own,

or that an affiliate of theirs owns. Someone who has two cemeteries, one that is not profitable and another that is profitable, cannot just walk away from the unprofitable one and turn it over to the municipality.

With respect to unmarked burial sites, unmarked burial sites are now defined as a separate category, unlike the current statute which says, "When you find one, just label it a cemetery, build a fence around it and go through a cumbersome process to deal with it." Unauthorized disturbances will be prohibited. All discoveries of unmarked burial sites must be reported to the authorities. Procedures for notice to the relevant parties—that includes the land owners and those who represent the deceased—and provisions for negotiating site disposition agreements and dispute resolution through arbitration will be provided by regulation.

In the miscellaneous category, specific rights are identified in the act for agencies responsible for veterans' affairs, including the right to be notified and consulted on matters concerning interments they have financially assisted. That includes groups like the Commonwealth War Graves Commission.

Mr Wiseman: With the number of diseases that are out there now and with the act coming in and not likely to be amended for a long time, I wondered that there was not something in the act for funeral directors with respect to certain parts like blood and so on, so that it would go into a holding tank that would be taken away, similar to what they do in hospitals, particularly in cases where I understand that some of the doctors are now saying that so-and-so may have AIDS or has AIDS or whatever, so they can protect themselves a little bit more working with that body.

I wondered if something had been thought of, such as putting a holding tank in their premises that could be pumped out and taken away to protect the people, similar to hospitals. In that way it would not be going down the drains and so on, where goodness knows what might happen to it down the way. It is protection for all of us, in other words, and I just use AIDS as one of them. There are probably other communicable diseases that are not as bad, but are there too. When we are probably not going to deal with this act again in our lifetime—

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Mr Dietsch: No, that was the old government.

Mr Wiseman: Well, we will be the government again next time. Anyway, why have you not addressed that or mentioned that anywhere in the act?

Mr Tappenden: The Funeral Directors and Establishments Act is only one of the statutes that funeral directors and establishments have to comply with. Statutes like the Health Protection and Promotion Act and a variety of statutes administered by the Ministry of the Environment also dictate certain things that funeral directors and establishments will have to do.

This has been an issue of some considerable discussion and concern with all of the interest groups. Although in the Ministry of Consumer and Commercial Relations we do not have medical or environmental experts, we have consulted widely with the Ministry of Health and with the Ministry of the Environment. We have even gone as far afield as the Atlanta Centers for Disease Control to ensure that we are covering off the health and environmental protection needs that are not covered by other statutes.

It is my understanding that what is done with the waste products from a

funeral establishment is adequately covered by environmental and health statutes. There will be particular regulations set out under this statute where there are gaps in those other statutes that do not deal particularly with the funeral sector. There will be regulations made dealing with practices, including hygienic practices, and that would include, if and where there are any gaps in that process, dealing with toxic wastes.

Hon Mr Sorbara: Just to make one more comment on that, because my friend mentioned AIDS particularly, one of the areas that obviously has to give us all concern is the health and safety of the working people who are dealing with the recently deceased, and presumably that would be covered under Ontario's Occupational Health and Safety Act and regulations.

There is, I think, unfortunately a commonly held belief that a virus like AIDS will continue to survive indefinitely post-mortem. Scientific evidence is all to the contrary, that it does not survive for a long time. The long and the short of it is that as Mr Tappenden has said, while some of the things will be addressed in regulations, one has to understand that there are a variety of areas that are already and comprehensively dealt with by other statutes.

One can query, in terms of the health and safety of a funeral director or people working in a funeral establishment, whether that is sufficiently addressed in the Occupational Health and Safety Act, but to the extent that needs addressing, it ought to be addressed under there. Similarly, public health statutes that are in place and public health inspections done by boards of health and municipalities are another area that is covered.

This is relevant as well because there has been some concern expressed initially about the fact that the Board of Funeral Services and the administration of the act are, in conjunction with this bill, being transferred from the responsibility of the Ministry of Health to the responsibility of the Ministry of Consumer and Commercial Relations. I, for one, think that does not threaten the industry, nor the quality of care that individuals are going to get at the time of a loss of a family member or whoever is to be buried or to be provided with a funeral.

The health care issues are extremely important. They are important to the workers in that industry, to those who survive the deceased and to us as a matter of public policy, but the fact is that it is more appropriate to allow these various pieces of legislation to mesh together in an industry than to comprehensively try to address all of those questions under one statute, just as within the mining sector, where there are serious issues of health and safety not only in the mining of the operation, but in the handling of what it is we mine; for example, uranium. The Occupational Health and Safety Act deals with that and has specific regulations under it to deal with that, and the Atomic Energy Control Board has regulations dealing with the specific substance.

Mr Wiseman: Different people I have talked to in my area, and maybe it is different, have even thought that this bill should go so far that an AIDS patient should be cremated, not buried. They do not have the same confidence you have, Minister, that the AIDS virus continues on for just a short time after death. They think that it is around for a lot longer than that and there should be automatic cremation for any known AIDS carrier. I do not know if you ever want to go that strong in your legislation, but it makes some sense.

Mr D. R. Cooke: What is the basis of what they say?

Mr Wiseman: They feel the AIDS virus carries on longer than the minister, his officials or whoever has advised him do. They feel it goes on much longer and could contaminate even after death.

Hon Mr Sorbara: I do not make my remarks based on my own scientific research. I simply make them on the basis of the scientific evidence acquired by the ministry on these matters. I suspect that with a disease as serious as AIDS, there will develop some mythologies and some reactions that are not based on scientific evidence or the facts as we know them. That is not to say we are not still probing in that area of science, but it seems to me, and I have been advised, that the best scientific evidence of that virus in particular is that it survives only a very short time after death. There would be absolutely no requirement for cremation or special precautions within this act to deal with that particular disease. Mr Tappenden, do you have a further comment on that?

Mr Tappenden: If I could just add to that, again basing this on medical advice that we have actively sought out, the Health Protection and Promotion Act deals specifically with categories of diseases and certain procedures that have to be followed in dealing with remains—bodies that have had those diseases—and it specifies which diseases health authorities consider dangerous enough to force cremation. So a doctor or a local public health physician can order cremation in the case of certain diseases. My recollection, without having it in front of me, is that it includes things such as anthrax and smallpox, but does not consider AIDS. The best medical evidence we have from both inside and outside Ontario is that the AIDS virus dies within 24 hours of the death of the body.

Mr Callahan: I have another question, but just to follow up on that, there was an interesting commentary on 60 Minutes last night, where a young doctor in the United States is leaving the profession because in the United States they cannot test a patient for AIDS before they operate. I guess the question I am asking then is, was any consideration given to that type of investigation being available to a funeral director who is to embalm a body, as to whether or not the person had died of AIDS or AIDS complications so that he could protect himself adequately against infection?

The second side of it is that you quoted something from the disease control branch in Atlanta. Apparently, last night on the tube, as well, he indicated that these people are not as forthright as one might expect. He indicated that there were some 17 patients—17 doctors—who had died or health workers who had died as a result of infection from AIDS. As it turned out, they only examined about five per cent of the total number of health care workers in the United States and the director of that agency admitted that. So it is a serious issue and I think it might be considered.

1140

Hon Mr Sorbara: My understanding, Bob, is that it is of significant concern to funeral directors, and obviously to those funeral directors who are in direct contact with the body, whether it is being embalmed or prepared for a closed casket burial in the absence of embalming, or any situation where one comes into contact with the body. I think the most appropriate place for a comprehensive strategy, if you like, or a set of guidelines to be developed will be with the new board that is established under the act, and through regulations if regulations are necessary. I am certain, although I have not been told directly, that the board as it exists today has discussed that matter. I know personally of a young man who has been in the business for a

while and he tells me that this is something that they talk about and that they are trying to work out.

In this sort of situation, the best thing is to develop guidelines that are based on the very best scientific evidence, take every single precaution necessary and then at the same time not allow---

Mr Callahan: Hysteria.

Hon Mr Sorbara: —hysteria to create an uneven market or an uneven reaction by those who are in the business or those who call upon the services.

Mr Callahan: I guess, as well, by being done by the board it creates flexibility that will move forward as scientific advances are made.

I want to ask one further question, if I could, Mr Chairman. This is highly technical but it in fact deals with certain rights under this act, subsection 14(6).

Mr Haggerty: Bill 30 or 31, Bob?

Mr Callahan: This is Bill 30. I am sure there are other areas in here too where there are time limits, but subsection 14(6) is particularly critical because it gives the person against whom the complaint is registered 15 days within which to indicate he wants a hearing. I see nothing in the act to provide for an extension of time. Normally the act would say that the rules of practice would apply. I notice that they do say that in subsection 45(7), but that is only with reference to an application under that specific section. If I am right, that means that if the time limit, the 15 days went by, that individual would be deprived of any right to a hearing. I would like that looked at.

Hon Mr Sorbara: I am advised that the system, including the time limits established in this act, is consistent with other statutes that deal in this area and regulate in this way. Just because a provision is consistent with an administrative, policy and legislative approach in other statutes does not mean that it is perfect, but it means that those who are in the habit of and accustomed to being regulated under the Ministry of Consumer and Commercial Relations have not found this particularly inappropriate. Nevertheless, it is a point that we undertake to look into.

Mr Callahan: With reference to other acts, it usually has a section that says, "In cases where hereinafter not other provided for, the rules of practice apply." Under the rules of practice, and I cannot remember what the rule is, where a time limit has been set you may apply to a court on proper grounds to have the time expanded. Since subsection 14(6) would have a significant impact on a person against whom a complaint had been filed, if through inadvertence he allowed the 15 days to go by, he would have in fact deprived himself of a hearing. I notice that it is specifically stated in subsection 45(7), so it is not without understanding that the drafter of this legislation put it in there, but that only applies to that section.

Hon Mr Sorbara: Mr Chairman, perhaps we will have a fuller response. We will examine Hansard and have a fuller response to Mr Callahan's concerns during clause-by-clause consideration when we get to that section. For the moment, I will ask Bernie Webber to make a comment on the section.

Mr Webber: Mr Chairman, I am advised that the procedures and

authorities of the Commercial Registration Appeal Tribunal can extend that time period in a general way for all of the matters that they consider.

Mr Callahan: I did not see a section in there, but—

Mr Wiseman: In their, that is, in their legislation.

Mr Tappenden: That would be the Ministry of Consumer and Commercial Relations Act.

Mr Callahan: I see.

Hon Mr Sorbara: I am not sure that is going to satisfy you for now, but when we get to that clause, we will have a document perhaps setting out how this particular appeals section fits into the overall framework.

Mr Callahan: Perhaps I am preparing for the future. If I ever had to represent somebody on one of these, I would not want to have to look at five statutes for it.

Hon Mr Sorbara: The rules of practice have changed several times since you were practising, Mr Callahan.

Mr Callahan: You had better believe it.

Mr Dietsch: I would like to go back to this health question. Eric, I wonder if you could provide the committee with the information as to where this information came from in relation to the safety aspect of the embalming, the health aspects of the body, etc. If you could provide that, I think we would find that most helpful. I guess I am concerned that it is in fact the best scientific information that this committee can have. I think it is a very critical issue in terms of making sure that the safety aspect is out there and I guess committee members will probably feel the same as I do that the information we get is the best that is available. I cannot put it any more simply than that.

Mr Tappenden: We would be happy to provide you with the material we have. I will just tell you now, by way of information, that as well as the Atlanta Centers for Disease Control to which we were referred by the Ministry of Health, Dr Jacqueline Carlson who is the head of epidemiology as part of the public health area of the Ontario Ministry of Health has spent considerable time with us and with some of the interest groups involved, explaining the ministry's considered view of a number of these issues, including the AIDS question, the other communicable diseases and the environmental questions.

The Chairman: Miss Martel wishes to rekindle her relationship with the minister.

Hon Mr Sorbara: I know it is going to be warmer than ever.

Miss Martel: Here we go. I wonder if you could take a look at pages 1 and 2, because I am concerned about what I see in terms of concentration in the marketplace by a small number of players, it looks like.

Hon Mr Sorbara: I am sorry, pages 1 and 2 of what?

Miss Martel: Slide 1.

Hon Mr Sorbara: Of the slide presentation.

Miss Martel: On slide 2 there is the notation that Trillium Funeral Service Inc, which is a subsidiary of Arbor Capital Resources Inc, owns at least 16 establishments and there have been more acquisitions to date. I do not know when this was first drawn up and how rapidly they are acquiring some of these operations.

On the page after, I look at Memorial Gardens Canada Ltd, it being the largest commercial operator of cemeteries in the province, again a subsidiary of Arbor Capital. It really concerns me that we are seeing that type of concentration in the marketplace. Given that a number of groups—the United Senior Citizens of Ontario, the Consumers Association of Canada, the Board of Funeral Services—all advocated that there be a strict division between the three sectors, I wonder why the ministry did not take that next logical step and actually clearly divide the three sectors—funerals, cemeteries and monuments—so we start to undermine some of the concentration that is going on, because I do not think that type of concentration is going to benefit consumers in the long run.

Hon Mr Sorbara: It is an interesting point and I know it is one that was argued by one of our former colleagues, the former member for Welland-Thorold, in his understanding of this sector. These bills, Bill 30 and Bill 31, provide for the separation of the funeral homes and establishment sector and the cemetery sector and that has been a policy determination of the government after a great deal of consideration, listening to the merits of a variety of viewpoints. The only remaining question is, is there any benefit in the segregation of that third sector, which is monument builders and the sale of monuments used in cemeteries?

1150

After a lot of consideration and representations from a wide variety of people, it seemed clear to the government, to my predecessor and to me, that there was no good argument for the creation of, in effect, a monopoly on the sale of monuments. After all, what we are dealing with in the monument sector is a trade and a profession of stonemasons who sell well-worked stone in conjunction with the remembrance of a deceased.

Although for some it is a very important part of the process of bereavement and burial, it is, after all, dealing with the production and marketing of a product. It just happens to be that the product is used very often in a burial, but there are a lot of other products used in the commemoration of a burial, including flowers and, my goodness, stationery, notices and items like that.

Mr Tappenden: Caskets.

Hon Mr Sorbara: Caskets as well, Eric mentions. There are a lot of products that are directed to this sector and there seemed no clear reason to create a monopoly and a separation in respect of one of those products and not a whole bunch of others of those same products. The standing representations, to the contrary, did not seem to indicate that would be in the best interests of consumers.

Miss Martel: If I might continue, you talked about not having a good argument for the monopoly in the field of monuments. I guess I would go to slide 5, where one of the needs for the new legislation that was listed was an

unequal playing field among industry sectors. I am wondering if the minister can comment on how level the playing field is when you have nonprofit cemeteries that are allowed to sell markers and monuments, but at the same time are not paying property or income taxes, operating in direct competition with monument establishments that are paying those kinds of taxes.

If you are looking strictly from the industry side and not the consumer side and talking about a level playing field, how level is that playing field when those two groups are in direct competition, one paying taxes and the other not?

Hon Mr Sorbara: It is rather refreshing, in an ironic way, to hear one of the true champions of the New Democratic Party being critical of the existence and vibrance of a nonprofit sector.

Miss Martel: I thought you would like that.

The Chairman: Get on with answering the question.

Hon Mr Sorbara: I find that a delight. That is the high point of my day, certainly, and perhaps my week.

I think what you should understand is that this is an industry and a sector that has a history. The fact is that the history, in terms of cemeteries, is one that is rooted deeply in the church, in the organization of religion in this province and municipalities. As Eric said in his presentation, the existence of a for-profit sector, a commercial sector in cemeteries, is a relatively new phenomenon.

I can understand the for-profit sector in the for-profit part of other sectors of our economy being concerned about the advent of a not-for-profit sector. No particular example comes to mind, but there are a lot of services and goods that have been provided in this economy by the private sector historically, and when government or some other group enters into the marketplace, there is a concern that the for-profit sector cannot compete any more because government is providing a nonprofit service that puts the others at a disadvantage.

Here I think we are achieving a more level playing field. After studying the legislation and the commentaries on the legislation, I am convinced that we will continue to have a vibrant sector in funeral establishments and we will continue to have a vibrant commercial operation in cemeteries. The fact that those players can also sell monuments is not going to be the end of independent monument builders because, after all, somebody has to build the monuments and that is what monument builders do. If they sell them through a cemetery or a funeral home or a local Beckers, it is part of the marketplace. What will be relevant will be the demand.

Mr Farnan: I think my colleague has focused the issue somewhat. Obviously these are the beginnings of the hearings and we want to evaluate over the next week exactly where we will fall on this particular topic.

One of the comments that was made by Mr Tappenden in discussing the first two slides—and I think my colleague has referred to it—as I wrote it down was, "Since these figures were established, there have been further acquisitions which may make these figures obsolete." How rapidly is the market changing and when were these figures taken? Do they have any relevance today?

Mr Tappenden: These figures were put together initially about a year

ago but they have been updated quite recently. I commented about further acquisitions because I was aware that the Loewen Group, for example, had within the last two months purchased four more funeral establishments in Ontario.

I am not aware of Trillium Funeral Services, for example, which Miss Martel mentioned, having acquired any over and above the 16 that we identified, nor am I aware of SCI purchasing any more than the three that we noted here in Ontario, although it has purchased some outside of Ontario. I believe these figures are a relatively accurate picture of what exists out there, with that one exception of the recent acquisitions by Loewen in Ontario which would take it up to 16.

Mr Farnan: If one were to describe the activity within the market, would one say it is a fairly volatile market, a market in which there is significant change taking place? If one were to look at, say, the period of the last 12 to 18 months, would you say there are significant changes taking place within the market?

Hon Mr Sorbara: The technology is not changing.

Mr Farnan: I am talking about corporate concentration.

Hon Mr Sorbara: I think the figures that Eric has presented give you some sense of the changes that are taking place. They take place in an environment where consumer preferences are changing, not rapidly but so that they can be measured and measured with indications of a shift in preference. Historically, if you go back 50 years or so, cremation as a way of dealing with remains really was not very popular in Ontario. It became far more popular on the west coast before it became more popular here in Ontario.

In terms of the corporate aspects of the sector, I would not say it is as rapid as some areas of corporate reorganization and corporate concentration. I would say I think this bill deals with the realities that are taking place in that aspect of this sector.

1200

In considering the variety of interests, there are those who have argued and will argue before this committee very strongly that it is in consumers' interests to allow funeral establishments to be sited on and operated by cemeteries. I think you will hear the arguments and you will judge those arguments.

That also provides ultimately for a fuelling of corporate concentration in this sector that would be even more rapid than has historically been the case over the past 20 years. The tradeoff has been that the legislation allows for an investor to have investments in a funeral home and in a cemetery, but that the two have to be operated separately. These are tradeoffs.

It is interesting that it is before the resources development committee, which had such a very political bill before it in the spring-summer session. My own sense is that there is not a great deal of politics here. I remember Mike's speech when the bill was introduced on second reading. There are just difficult questions where there is a variety of interests.

The ministry has, through the work that it has done, tried to present a package that, as best as it can, sets aside a context in which this industry

can operate for the next 15 or 20 years. It is not particularly a Liberal or a Conservative or a New Democratic position. It is just some pretty careful analysis, some tough judgements being made and the whole thing being summed up in two pieces of legislation.

Mr Farnan: I am rather pleased that you mentioned our former colleague Mel Swart and his contribution to this area. Just for the record, it appears that in this legislation you have taken the solid positions put forward by Mel and the New Democrats for many years and incorporated them into the proposed legislation. Why is it that you accepted all of our positive proposals and left out this area of separation?

Hon Mr Sorbara: Because whenever we are looking for sound policy, we take those proposals which are sound and we reject those which are not.

Mr Farnan: I want to thank you for that remark, because it brings me to my last question. The most astonishing statement I heard from you this morning was that, "We are achieving a more level playing field." I find it extraordinary that you, as a minister looking at this particular industry, would say, "Things are terrible and we are going to make them more level." When you have the plows out, why do you not level the playing field instead of leaving the humps in it?

Hon Mr Sorbara: I would suggest that, considering all of the various interests that have to be appropriately reflected in this bill, we have achieved precisely what the former member for Welland-Thorold was arguing for in principle. More important, we have achieved in this bill a legislative and regulatory framework within which this industry can continue to operate vibrantly and in the interest of consumers.

On the question of monument builders, in our view there was just not sufficient authority for the proposition that no one ought to be able to sell cut stone to commemorate a bereavement but a particularly identified group of stonecutters, monument builders. In the final analysis, there was not sufficient authority for it.

Mr Farnan: I suppose I can ask you this question. There is some speculation that perhaps what you have here is a divide-and-conquer piece of legislation, that in fact there was an alliance that was fairly strongly adamant in terms of the area of separation. Some of the legislation is indeed positive and addresses issues that need to be resolved in terms of consumer protection, but in fact, in part of the process, the alliance has eroded a little bit. The principle of the alliance remains the same and perhaps the justice of the cause remains the same.

Hon Mr Sorbara: No. I do not think it is a matter of conquering at all. I simply think that our obligation was to create legislation that was in the interest of consumers in an industry and in a sector where the consumer is particularly vulnerable and in a sector where there are changes in corporate realities. Historically, it used to be that in rural, small-town Ontario that questions of pre-need and the purchase of a cemetery lot and all of that stuff did not confront the average Ontario citizen. The funeral director was often a member of that community for a very long time operating a family-owned business.

That has changed now and marketing techniques have changed. My goodness, the ability to telemarket in any sector is simply overwhelming now with modern technologies. The ability to suggest contractual arrangements at a time of

bereavement that a consumer may regret or not be able to afford six months down the road when the bills come in requires us to take into consideration a variety of interests and then do the best job we can to ensure that the interests of the consumer are protected primarily by way of disclosure, by knowing what it is that you are buying and ensuring, for example, if you are putting away money for a future need that those funds are protected and as well to make sure that those who are providing the services are doing them within the statutory framework which will allow them to continue to provide services 15 or 20 years down the road. That is what the bill does, I think.

Mr Farnan: Thank you, Minister. I should also, perhaps just as a final comment, say to you that our role is to support the legislation, which is sound, and to help you along with those amendments which will make it better. If your goal is to achieve a level playing field, our goal may be to help you to find a level playing field.

Hon Mr Sorbara: I think your participation, as always, will be constructive. But I just say, as you yourself talk about amendments, we had a discussion earlier on about the provision of amendments. I gave an undertaking to provide those to you as soon as possible. What I would like to do is provide you with those amendments that are clearly of a technical nature, but in accordance with the normal procedure of this committee, to provide you with additional amendments subsequent to the hearings that we are going to be having.

Your party may have amendments, the Conservative Party may have amendments and the Liberal members may have amendments. I think all of us will want to listen to the representations that come before the committee before we make a final determination of the substantive amendments, if we could.

Mr Wiseman: Just briefly, for clarification, when you say "establishments," that means businesses, does it not, that might have six, eight or 10 funeral homes under them? To get a better picture for us of how many that involves, would you have any idea when you say "16 establishments" how many funeral homes that would actually be? Would it be 50, 60 or more?

Mr Tappenden: We use the two terms synonymously. We use the terms "funeral home" and "funeral establishment" synonymously so 16 establishments mean 16 funeral homes in all locations.

Mr Wiseman: Funeral homes.

Mr Tappenden: Yes.

Hon Mr Sorbara: That is 16 separate sites.

Mr Wiseman: But some of them have five or six under their wing.

Mr Tappenden: An example would be—

Mr Wiseman: I think in Ottawa there are four or five under one funeral director, and I wondered if it was just 16 sites. I could ask you what we used to worry about in the nursing homes, and some were asking along that line. Have you any concerns about these people growing at quite a rate? You mentioned that there is quite a change. Is there a level when you would be concerned that perhaps the consumer might have to pay more money because they control the price and maybe that \$3,500 average would go to \$5,000 or so?

As long as you have the competition out there, it will remain healthy and well, I think. But if it gets into too few hands---and that is what we were worried about in the nursing homes, when a few got about 40 per cent of the nursing homes in Ontario---perhaps they could dictate to government, and in the other case they could dictate to the consumer.

Hon Mr Sorbara: I do not think under this legislation that we are trying to take on the responsibilities that are appropriately the federal government's under the Competition Act and the statutes and regulations that govern competition in Canada. Nevertheless, in drafting and structuring the legislation and in formulating the government's policy, we believe we have created a statutory framework where all the sectors involved in this industry can continue to be vibrant. In other words, we do not anticipate, whether under this act or the federal act, that we will very shortly see one dominant player in this industry in the near future.

Mr Wiseman: Just to level it out so I understand---this is almost like a question in the Legislature---are you not concerned with what is happening with the growth in three or four larger establishments? Do you not feel that will come back to haunt the consumer? Is that the bottom line?

Hon Mr Sorbara: Perhaps I could just ask Eric to respond to that by way of an example.

Mr Tappenden: I think the minister was quite correct that the issue of corporate concentration and competition is clearly the federal government's under the Competition Act. We at the officials' level work very closely with them where we see evidence of undue corporate concentration and any ill effect on consumers.

There is an example of a situation in one city here a few years back where one of the large corporations involved in purchasing funeral homes went in and bought up several funeral homes in addition to those that it already owned in that city and prices went up significantly immediately after that transaction. The federal bureau of competition policy stepped in and caused the undoing of that transaction and the divestiture of those funeral homes, which resulted in the rolling back of prices because of that undue impact of corporate concentration.

We would count on the federal government to do that in terms of enforcing that principle. What we have tried to do is to put forward a legislative package that supports the notion that we do not want undue corporate concentration, such as the no-combo prohibition, but without actually getting into the business of doing the federal government's job.

The Chairman: Mr Sorbara, Mr Webber, Mr Tappenden, thank you very much. I think that I speak for members of the committee when I say that the presentation has been helpful in giving us an overview of the two bills. Of course, we invite you and everybody else to stay for the presentations that start this afternoon at two o'clock.

The committee recessed at 1214.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

MONDAY 25 SEPTEMBER 1989

Afternoon Sitting



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Cooke, David R. (Kitchener L) for Mr Brown
Cunningham, Dianne E. (London North PC) for Mrs Marland
Farnan, Michael (Cambridge NDP) for Mr Wildman
Haggerty, Ray (Niagara South L) for Mr McGuigan

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Guaranteed Funeral Deposits of Ontario (Fraternal):

Markey, Christopher J., President
Nicholls, Dean, Vice-President

From the Ontario Funeral Service Association:

Doyle, Andy, Past President and Past Chairman, Legislative Committee
McKinlay, Rob, Chairman, Legislative Committee

From Arbor Capital Inc:

Wilson, Philip L., President
Calpin, Martin, Accountant; with Deloitte, Haskins and Sells
Scanlan, Daniel J., Chairman

From the United Senior Citizens of Ontario:

Mansfield, Alex, President

From the Ministry of Consumer and Commercial Relations:

Webber, Bernard, Assistant Deputy Minister, Business Practices Division

From the Cemetery and Crematorium Association of British Columbia:

Defoe, Father Nunzio J., Legislative Co-ordinator and Secretary-Treasurer

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 25 September 1989

The committee resumed at 1409 in room 151.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The resources development committee will come to order. We have a full agenda this afternoon, and the first presentation is from the Guaranteed Funeral Deposits of Ontario (Fraternal). We have arranged the presentations, I think you understand, for 30 minutes each. You can use all the 30 minutes yourself, or you can use part of it and allow time for questions from committee members. If you would introduce your group, we could proceed. Welcome to the committee.

GUARANTEED FUNERAL DEPOSITS OF ONTARIO (FRATERNAL)

Mr Markey: Thank you very much, Mr Chairman. We appreciate having the time to meet with you and your committee. On my right is our administrator, Lisa Miseresky, and on my left is Dean Nicholls, a funeral director in Midland and vice-president of Guaranteed Funeral Deposits of Ontario (Fraternal). My name is Chris Markey. I am a funeral director in Hamilton and president of Guaranteed Funeral Deposits.

I have circulated a package in which is my presentation and also other information about Guaranteed Funeral Deposits. I have a very short presentation and, if I could, I have a very brief videotape that is five minutes long that I would like to show you because I think it is pertinent to what I wish to talk to you about.

Guaranteed Funeral Deposits of Ontario (Fraternal) began as the Funeral Society of Ontario in the early 1960s. It was a response to door-to-door solicitation of funerals by insurance salesmen, who were compensated by commissions earned from the sale of policies. What was taking place was that an insurer would enter into a contract with a funeral home, whereby the funeral home would agree to perform certain funerals arranged through the sale of insurance. The insurance salesman would effect his sale and then direct the purchaser to the funeral home so that arrangements could be made for the performance of the funeral funded by insurance.

This was when concerned funeral directors stepped in and organized the fraternal society now operated as Guaranteed Funeral Deposits, a nonprofit vehicle licensed under the Insurance Act for the purpose of selling funerals to anyone who desired to purchase a funeral from a funeral director. The funeral directors were members of the fraternal society and, as such, under the act were entitled to sell the product of the society.

The founding funeral directors' focus at that time was to create a funeral trust fund administration system that would protect the public's trust

moneys and facilitate the recording of these trust moneys in order to report annually to the Board of Funeral Services, our regulating body. This remains our main focus today.

In the beginning, the public purchased funerals from the members of the fraternal society, but as time evolved, fewer and fewer funerals were sold and more and more money was deposited in the nature of a single-premium policy to provide for the payment of funeral costs at the time of need.

As we are a fraternal society licensed by the department of insurance, we have options on where to invest these trust moneys. Guaranteed Funeral Deposits invests these moneys, in accordance with its investment committee and adviser, with a trust company on the basis that the trust company would issue individual certificates to back up the policy issued by Guaranteed Funeral Deposits to the purchaser. By so doing, Guaranteed Funeral Deposits indirectly arranged a government guarantee under the deposit insurance legislation for all funds put with Guaranteed Funeral Deposits as a depository.

Guaranteed Funeral Deposits feels it is important to mention that prearranged trust funds deposited in various depositories in the province have grown to over \$300 million. Guaranteed Funeral Deposits now administers over \$56 million of the public's money.

We have offered no commissions or fees and we have not aggressively solicited prearranged trust funds. We believe the amount has grown because funeral directors recognize that we have the best prearranged trust fund administration system in the province and so they direct the public's funds to us. They know the funds are secure. Guaranteed Funeral Deposits is inspected annually by the department of insurance and it approves our actuarial report.

Guaranteed Funeral Deposits has been a recognized depository for over 25 years. We feel we are the safest and best-regulated depository for funds intended for prearranged funerals. Guaranteed Funeral Deposits was included under the old Prearranged Funeral Services Act and now qualifies to be included in the new act.

Guaranteed Funeral Deposits feels it is important for this committee to understand the flow of trust funds. Guaranteed Funeral Deposits receives deposits from the public for prearranged funerals and issues certificates of deposits. Guaranteed Funeral Deposits, in turn, invests its money as would a trust company, bank, credit union, etc, and returns all money to the depositor in the same way as any other depository. We are no different in the basic service offered by all the other depositories that we were included with in the regulations of the existing Prearranged Funeral Services Act.

Guaranteed Funeral Deposits has had a very positive effect on the prearranged funeral environment since its inception. We were the first and only trust fund administrator to offer third-party security. We drafted an excellent contract for funeral homes to use when people prearranged their funerals. We were the only depository to come forward and help the people of Kincardine by funding many of their prearranged funerals. We suggested bonding years ago. We have worked with the government for years in attempting to draft new legislation. We have the most comprehensive reporting system for funeral homes. It is recognized by the Board of Funeral Services and has been copied by other depositories in and out of the province.

In order to continue to positively affect the prearranged funeral service environment in the future, we need to be recognized by the public and

by funeral directors as being on an equal footing with the other depositories. In this way, we can provide positive competition. We need to be included in the new act. We are not a subgroup of the Board of Funeral Services or of the Ontario Funeral Service Association, or another arm of funeral service. We are a depository and offer the best protection of the public's moneys in the entire province.

Members of the public want to prearrange their funerals for numerous reasons:

1. To ensure themselves of what they consider a proper ceremony.
2. To relieve the financial burden on their families.
3. To relieve the stress involved in making decisions at an emotional time.
4. It makes sense to plan ahead, much like purchasing insurance, having a will, drafting an estate plan.

This is what the public wants and Guaranteed Funeral Deposits feels it is our responsibility to provide the proper administration for the public's trust moneys.

Could I take a moment and show you, as I mentioned, a very brief video? This is a video we are making for our membership and it just happens to coincide with the fact that you have given us the opportunity to make a presentation to you. We thought it would be of benefit to show you this videotape also.

The Chairman: Mr Markey, just before you do that, as a matter of information, on page 2 of your brief, I do not understand the difference between the \$300 million and the \$56 million.

Mr Markey: In Ontario, there is approximately \$300 million in prearranged funeral trust funds, of which Guaranteed Funeral Deposits administers \$56 million.

The Chairman: Okay; I understand that. What was significant about Kincardine?

Mr Markey: As far as my memory is concerned, that was the first kind of public misappropriation of trust funds.

The Chairman: Oh, I see.

Mr Markey: At that time, that was a black mark against all funeral services and as we were administering trust funds, we funded some of the funerals in Kincardine.

The Chairman: Do we want to get into the questions now? Would you prefer to—

Mr Markey: I prefer to show this, if that is fine.

The Chairman: Is that okay with members of the committee? Okay.

[Video presentation]

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Mr Markey: Our focus is prearrangement and the administration of those trust funds. We felt this video kind of honestly shows why people wish to prepay for their funeral. As we have mentioned already, the funds continue to grow. The funds are held in trust in Ontario. We believe we are the best vehicle for the proper holding of these trust moneys. We are the third party between the investor and the funeral director and we ensure that the funds are held securely.

Just maybe to conclude, we would like to be included in the act so that we can continue to have a positive effect on the other depositories in the province. We think we are probably the most secure depository that exists right now.

The Chairman: Does "no penalty, no hassle" mean no administrative fee?

Mr Markey: On our part, no. From us, no.

Mr Farnan: I think you have answered the question with the line, "We need to be included in the new act." Obviously, I take it that you are not included in the act as it stands.

Mr Markey: Not in the drafts of the legislation that we have seen. We met with the committee from the Ministry of Consumer and Commercial Relations a few times. I think, in the last meeting, they were unaware that we were legislated under the department of insurance. Whether that affects their recommendation at all or not, I do not know, but as of the last draft of the act, no, we were not included in the act.

Mr Farnan: Well, it would appear to me that your role is certainly very supportive of the consumer and merits inclusion within the act. I would appreciate if you would put together the wording and examine the act as to the various areas of the act where the amendments are recorded, or is that already in your brief?

Mr Markey: No. It is not in our brief.

Mr Farnan: Okay. I think for the convenience of everybody, if you could give it your best judgement as to the kind of wording, that would facilitate the inclusion of your group within the act. If you have it sent to the clerk for distribution to the committee, at least we will have some wording to work on at the appropriate time.

Mr Markey: Okay.

Mr D. R. Cooke: Your group is a fraternity, you call yourselves.

Mr Markey: Yes.

Mr D. R. Cooke: About what proportion of the funeral directors in the province are members of your group?

Mr Markey: About 20 per cent.

Mr D. R. Cooke: And other funeral directors are doing the same sort of thing, I take it. No?

Mr Markey: No. The other funeral directors are dealing with a bank, a trust company or a credit union.

Mr D. R. Cooke: Are you asking to have that outlawed?

Mr Markey: No. In the old Prearranged Funeral Services Act, the banks, trust companies and credit unions were included in the regulations of that act, as we were. In this new act, the banks, trust companies and credit unions have been moved over to the act. We would have liked to be moved also with them, and we were not.

Mr D. R. Cooke: I notice, just quickly looking at your list of directors, that you do not have any in the Waterloo region that are included in your—

Mr Markey: In our board of directors?

Mr D. R. Cooke: Or at all in your list of funeral directors at the funeral establishments.

Mr Markey: Would Edward R. Good Funeral Home, I am not—

Mr D. R. Cooke: That is in Waterloo. Are they a member?

Mr Markey: In Kitchener itself?

Mr D. R. Cooke: Yes.

Mr Markey: There are only three funeral homes, two of which are owned by one of the larger corporations, and they direct their trust funds elsewhere.

Mr D. R. Cooke: But Edward R. Good appears as a member.

Mr Markey: I believe so. Yes.

Mr D. R. Cooke: Okay. Do you have any figures on the cost of a prearranged funeral as compared to the cost of an average funeral when it is contracted by the bereaved?

Mr Markey: As an organization, no, we do not.

Mr D. R. Cooke: I tend to think it might be less.

Mr Markey: I have heard it both ways and that is why I am saying, as an individual and as funeral director in the province, I have heard that it is less and that it is more. I think, for ourselves, we could come up with an average of the funds we hold on deposit, but it would be low because some of those were prearranged back in the 1960s.

Mr D. R. Cooke: When you are dealing with the bereaved in a prearranged funeral situation, do they often ask for extras that have not been included?

Mr Markey: Yes. They do.

Mr D. R. Cooke: Thank you very much.

The Chairman: Mr Haggerty, who is also the parliamentary assistant to the minister.

Mr Haggerty: Thank you, Mr Chairman. I would like to interject a question. In your prearranged funeral services contract, I believe, the intent of the legislation is that all prepaid contracts may be cancelled any time prior to the service being delivered. It says in your contract: "The above funds may be withdrawn by the purchaser or someone authorized to act on their behalf, at any time, upon written application subject only to the terms of the Prearranged Funeral Services Act and an administration fee equal to the amount that may be charged by government regulation."

Do you have any problems with the proposal in the new act in this particular area, and do you have some difficulty if you do have a number of persons or individuals who may want to withdraw from the contract?

Mr Markey: First of all, it is not a great number of people who wish to withdraw their funds so it does not seem to be a large concern.

Second, Guaranteed Funeral Deposits does not have an administration fee that we charge. That contract was written up for the funeral homes to use, and it is up to the funeral directors—right now it is—to determine whether they wish to charge an administration fee to the people cancelling their prearranged contract with them.

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Mr Haggerty: Does your association charge them? It says you may.

Mr Markey: No, we do not charge. The only thing we ask is that before people move moneys out of Guaranteed Funeral Deposits they have the permission of the people who deposited the money. That is why I say that we are the most secure depository that exists now in the province. When I moved my funds into Guaranteed Funeral Deposits many years ago, I moved them out of a bank with no trouble at all. That is one of the concerns, I think, of this committee and of the people who drafted the legislation.

Mrs Cunningham: That is exactly what I was going to ask you. If this arrangement that you have now is permissible under the law, and in fact you are recognized under the Insurance Act, what kinds of discussions did you have with the government representatives and what kind of arguments would they have given you to preclude this service being part of the legislation now?

Mr Markey: I think the first thing that was always mentioned to us is that we were not under the definition of the Credit Unions and Caisses Populaires Act. However, it is stated in the new act that has been drafted. We were not under that definition. As I say, at the last meeting we had with the committee from the Ministry of Consumer and Commercial Relations, our lawyer was there at the time and he brought up again the fact that we were legislated under the department of insurance and we have to report to it and it has accepted our reports. So I think that kind of answered one of their concerns.

I believe the other concern they had had to do with what if someone else wanted to start up a fraternal society. I think there are only two fraternal societies in Ontario right now, the Independent Order of Foresters and ourselves, and I do not think there has been a new fraternal society since we formed back in the early 1960s. I do not think that is really a concern.

Mrs Cunningham: So you think you have answered their concerns?

Mr Markey: As far as I know, yes.

Mrs Cunningham: I suppose the other one would be philosophical. Were they concerned about the whole idea of people prepaying or prearranging their funerals? Was that anything that was discussed?

Mr Markey: No, I do not think that is a concern. Really, that was one of the points of our showing the tape. People want to do that. Even though some other consumer groups are recommending not to prepay, it still continues to climb very rapidly. There is \$300 million in trust funds there. We just think we have a really good system. But no, that was not mentioned by the people we spoke to from Consumer and Commercial Relations.

Mr Wiseman: You mentioned that you stepped in and helped with funerals in Kincardine?

Mr Markey: Yes.

Mr Wiseman: I talked to some funeral directors in my area and they assured me in my area no one ever lost his money with a funeral that they are aware of. If something went wrong, the funeral director in the area stepped in and did that funeral. Have you ever heard of anybody who lost his deposit because a funeral director went bankrupt? I had never heard of it. I asked the funeral directors in my area and they told me that, to the best of their knowledge, this never happens.

Mr Markey: To the best of my knowledge, it has not. I just know of that particular time, which was the first one that really went public in the papers, when we, the Ontario Funeral Service Association and I am not sure who else, came forward with moneys to replace what was absconded.

Mr Nicholls: It was a small amount of money compared to what is in trust today in most funeral homes. We were talking in the neighbourhood of \$40,000 or \$48,000 at that time.

Mr Wiseman: You are funeral directors who are setting this up. For years, even in 1975 and 1976 when the other act came through, you had to guarantee the money you took in prearranged funerals. I was asking the ministry officials this morning about the amount of interest that you can charge if someone wants to pull his money out.

The maximum under the old act, I think, was six months' interest. That was all you could take, but many did not take any because of the goodwill created out there. They tell the people, "Give it all back to me," and this sort of thing. Do you think that sort of thing was good? Six months' interest if you wanted to—I know you did not take any, but do you think that is a reasonable amount?

Mr Nicholls: The amount that is defined right now in the act is quite sufficient. You have to understand what has happened in the interval. Back in the pre-1970s, there was no control, no reporting to the board that was necessary other than a one-line call. Today the board requires us to report and there are extensive audit fees to come up with that. So if someone is changing funds and transferring them, I think a funeral director is justly entitled to a portion of that for his administration's involvement.

Mr Wiseman: Do you think he should get some of that 10 per cent or whatever?

Mr Nicholls: It is not 10 per cent; it is to a maximum of \$150 of the interest only.

Mr Wiseman: The old way did not give you anything for administering it because you get it all in the long run anyway, do you not?

Mr Markey: Under the act right now we can charge an administration fee of 10 per cent of the interest up to a maximum of \$150. That is under the act we are under right now.

Mr Nicholls: That is for transfer out if somebody has taken his funds out.

Mr Wiseman: But just to administer it year after year?

Mr Markey: No fee.

Mr Wiseman: That is what I thought. I was a little confused when you said that we should have an administration fee.

Mr Markey: No, the funeral directors.

Mr Dietsch: I am curious as to how one would gain membership in your fraternal organization. It is open to anyone? Does it have certain restrictions on it? How does one gain membership in your fraternal organization?

Mr Markey: Right now it is open to any funeral director of any funeral establishment in Ontario to direct trust funds our way, if he wishes. We have a membership agreement that they sign.

Mr Callahan: Any person?

Mr Nicholls: Any person, yes. Our bylaws are in the back of the brochure that we have given to you. Anyone who buys a funeral, who prepays a funeral, can belong to Guaranteed Funeral Deposits of Ontario.

The Chairman: I was just going to supplement that question. Automatically, that person is a fraternal member, then, or can be?

Mr Nicholls: Can be.

Mr Dietsch: Has anyone ever been turned down?

Mr Markey: No, not that I recall.

Mr Dietsch: Is there a membership fee, without my going through all your bylaws?

Mr Markey: Not in my history, no.

Mr Nicholls: There is no membership fee.

Mr Callahan: It says it is paid "by the payment of prescribed fees."

Mr Nicholls: That would be the funeral.

Mr Callahan: No, if you read it, it says: "Any person normally resident of the province of Ontario may apply for membership in GFD by completing the form of application prescribed by the board and by the payment of prescribed fees."

Mr Nicholls: The prescribed fee would be the deposit of the original of that contract of the funeral.

Mr Markey: That wording is from when it was originally founded. I am not sure exactly how many funeral directors got together. They paid the prescribed fee and formed a fraternal organization to administer trust funds.

Mr Callahan: Better change your bylaws.

Mr Dietsch: So at this point, then, is there no membership fee? Is any person eligible for membership in your organization?

Mr Markey: Yes.

The Chairman: I think we had better call this to a halt. Thank you for your presentation.

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Mr Callahan: Could I just ask one quick question? Let's say that a funeral director has a fairly large trust account that he has accumulated before he joins your organization and he turns over those funds to you. Let's say he had 20. They would certainly be in excess of the amount that is covered by the deposit insurance provisions. How do you protect that?

Mr Markey: Each certificate or trust account, however it is invested by the funeral directors, is covered by the \$60,000 deposit insurance.

Mr Nicholls: A single certificate for each funeral.

Mr Callahan: I see. So even though he turns it over to you in a lump sum—

Mr Markey: Yes.

Mr Callahan: Thank you.

The Chairman: Thank you, Mr Markey and your colleagues.

Mr Markey: Thank you very much for the time.

The Chairman: The next presentation is from the Ontario Funeral Service Association. That is this large grey brief. We have a number of gentlemen here. I trust that they will introduce themselves.

ONTARIO FUNERAL SERVICE ASSOCIATION

Mr Doyle: My name is Andy Doyle, from Ottawa. As a member of the legislative committee of OFSA, I will be speaking to you on behalf of the Ontario Funeral Service Association. With me on my immediate right is Grant May of Markdale, Ontario, president of the Ontario Funeral Service Association; on my far right is Harry Rath, a member of the legislative committee from Toronto, and on my immediate left is Rob McKinlay from Ridgetown, Ontario, the chairman of the legislative committee. We are all licensed funeral directors coming from various-sized funeral homes in various-sized communities across this province.

All of you hopefully received our written brief a few days ago, so I

see no point in sitting before you and rereading the material. Quite honestly, time would not permit. In our written brief we tried to give our reaction to Bill 30 and Bill 31 and to summarize the background leading up to the introduction of these bills.

At the outset, I would like to clarify for the members of this committee OFSA's position regarding the Funeral Directors and Establishments Act. We believe that Bill 30 is an improvement over the previous act. We believe that this act has the support of our profession, other responsible groups with an interest in the bereavement sector and the people of Ontario. We would not support any changes that would weaken the new act. In fact, we support strengthening Bill 30.

We strongly support the telephone and door-to-door solicitation prohibition. Because the statute does not prohibit other avenues of communication, such as direct mail and general advertising, it would be difficult to conclude that this prohibition is excessive. In light of manipulative, intrusive and pressured sales approaches that have taken place in the past, we believe the prohibitions are tailored to serve Ontario's significant interest in preventing abuse and insensitivity. We do not view the solicitation prohibitions as restraint of commercial free speech as long as other viable advertising alternatives are left open. We commend the government for overdue action in this area.

Further, as long-time advocates of improving the consumer protection aspect of prepaid funerals, we particularly commend the government for its initiatives in promoting and protecting prepaid funerals.

Today we are going to suggest that the committee consider and accept five amendments that we believe will strengthen Bill 30. These amendments will: clarify the meaning of "separation" between funeral services and cemeteries; recognize the occupational and environmental health hazards of nonembalming; maintain some of the self-regulating status of our profession; strengthen the professional status of funeral directors, and include all aspects of trade services in the legislation. Not only will these amendments, in our view, improve the legislation, but most will be in conformity with the intentions of the ministry as expressed to us by various officials.

The government has maintained that some of these issues can best be handled by regulations and should be left out of the act. We can understand that the officials of the Ministry of Consumer and Commercial Relations would find the regulatory process administratively more convenient. I want to say that we do not doubt their good faith. However, I am sure you as legislators can understand that our membership would feel more secure by having as many basic principles as possible endorsed by the Legislature of Ontario and not simply left to the regulatory process. The fact is, in the past five years the funeral profession has had to deal with changes of government, two different ministries, five different ministers, five different deputy ministers and many different officials. As has been said, things change.

As ministers and their officials come and go, all the good intentions that have been written or are about to be written into regulation may be lost to another set of goals, or worse, to indifference. We believe that in matters of principle, the direction should be established by the Legislature, written into the legislation and subject to change only by the authority of the provincial assembly.

With that said, I would now like to turn to the specific proposals we

are putting forward. The issue of paramount importance to us is that of separation. We believe that at this juncture in Ontario's development, the government has made the prudent choice by a policy of separation. However, we do not believe that this policy goes far enough. It was encouraging to hear the minister state at second reading that the prohibition against funeral establishments and cemeteries being located on one site will be strictly enforced by the ministry. However, we believe the issue of funeral homes not being located on cemetery sites is a significant, major policy issue that should be enshrined in the statute and not left to regulatory amendment.

With many other mandatory provisions of the new acts, we believe the bills will effectively preserve and promote competition within each sector. Separation protects consumers from tied selling and joint marketing referrals by assuring the independence of funeral directors. Later, you may hear from individual funeral directors who argue for combinations. Make sure any vested interests are declared to you.

We believe the government has set out separation in a manner that is fair to both sectors. The cemeteries will be responsible for the ultimate disposition of human remains, whether burial, entombment or cremation, and the funeral establishments and transfer services will be responsible for prior services.

While, in the short range, combinations might increase competition, we believe that in the medium- to long-term range they would lead to higher consumer prices, concentration of ownership and decreased choices for consumers. For most funeral directors in urban areas, there is strong competition, and the new act takes many steps to foster even more. In all areas, there is accessibility to funeral home services within a reasonable radius of cemetery locations.

Permitting combinations, with all the attendant risks, would not outweigh the concerns for consumerism and small business. Funeral service is a service industry, one hopefully run with compassion and understanding and not crass commercialism, but we are in business, most of us operating as small businesses. We pay taxes and are answerable to our clients if we do not do a good job.

In the cemetery scenario, we are talking about lands dedicated for a special purpose: to serve as resting places for deceased citizens, lands that enjoy special tax status, which no one would deny because of their ongoing responsibilities. Because cemeteries are repositories for the remains of our deceased citizens, we believe the consumer, rightly or wrongly, would have the perception that they must deal with the on-site funeral home. There is no demonstrable public need for combinations at this time.

We believe full separation would also do much to clarify administration of these acts. For most of us, combinations lead only one way: further concentration. Established cemeteries can build funeral homes on their land; established funeral homes cannot create cemeteries on their limited land holdings. Attendant zoning and other considerations would make it impossible for most of us to acquire land for cemetery purposes. While certain funeral directors might forge an alliance with a cemetery, it would exclude many others. The whole proposition of combinations works only in favour of cemetery operators. We believe that the government has assured that consumers will be free to select not only which funeral home or transfer service they wish to deal with but also which cemetery or crematorium, without any real or perceived pressure on their decision.

We are asking this committee to clarify within the legislation exactly what is meant by the separation of funeral homes and transfer services from cemeteries.

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Let me pause here to explain the position of the members of the Ontario Funeral Service Association. The government decision to prohibit combinations responds to the small-business component in this province. Most funeral homes in Ontario are still run as family or small businesses. Most of us are integral members of our communities where we grew up, attended school and returned to work in our businesses after being licensed. If our statement of our business philosophy is required, it can be typified as a belief in the market economy governed by rules of fair competition. Competition in this context has worked well for consumers in Ontario where, according to recent Board of Funeral Services statistics, the average cost of a traditional funeral is \$3,342, and services comparable to those permitted through a transfer service can be purchased for as low as \$400. The new acts will encourage more offerings and control any excessive pricing.

I would like categorically to state here that we believe in and welcome fair competition. Our concern over the question of separation comes from a different source entirely. Our concern comes from the historical pattern established by the commercial cemetery/funeral home conglomerate and from the recent phenomenon of the nonprofit cemetery, funeral home or transfer service combination.

We believe that it is naïve to trust that any form of separation, short of full separation, will prevent the reintroduction of tied selling and exclusive dealing or other such sales tactics. Even with some form of operational separation spelled out in the regulations, the forces of the marketplace will make the temptation too great for some combinations not to engage in unfair competition. In consequence, the manpower requirements for inspectors, the administrative costs and the time required to police adequately the activities of combinations could be prohibitive. Our experience with regulatory control in this matter leads us to the inevitable conclusion that the principle of full separation must be stated clearly in the legislation.

Adding to the burden of family or small businesses having to compete with distasteful sales tactics, a new form of combination is beginning to compete with us using a different set of competitive advantages. It now appears that nonprofit cemeteries want to enter the funeral business. Nonprofit cemeteries do not have to distribute income to shareholders or owners, nor do they have to pay income tax, business tax or property tax. The capital accumulation of these nonprofits over the years has thus been substantial. Already, one transfer service has been established under the auspices of a nonprofit cemetery.

As we pointed out in our written submission, nonprofit cemeteries were created for valid historical reasons: to provide burial plots for individuals who did not belong to a mainline religious group. Funeral establishments, on the other hand, do not discriminate in the provision of services. Thankfully, in Ontario today society is more tolerant of minorities than in earlier years.

We believe that because of excellent social support systems there is no public need for nonprofit funeral services. Yet we are going to have to compete with nontaxed capital accumulations and nontaxed funeral

establishments or transfer services that are not financially separated. Once again, our experience with regulatory control in these matters leads us to the inevitable conclusion that the principle of full separation must be clearly stated in the legislation.

We are calling upon the committee to clarify the government's position on full separation by amending the appropriate clause.

We are asking that a reference to ownership be included in section 39 in order to direct the framing of future regulations that deal with separation, protect consumers from inappropriate sales tactics, insure conformance with the intent of the legislation and clarify this government's position.

In our written brief we have provided a suggested wording for the amendments which we hope committee members will fully consider. For your convenience, we have attached our suggestions to copies of this presentation as well.

Another area of great concern to the OFSA is the question of the health and safety of the public and the employees in the bereavement sector, particularly when it comes to shipping or receiving human remains to or from another jurisdiction. We have argued at length and we believe persuasively in our report entitled A Summary Report on the Public Health Aspects of Embalming the need for a section in the act dealing with embalming or other means of protecting the public. The full arguments can be reviewed in appendix 5 of our written submission.

As referenced in appendix E of this report, 120 countries have regulations or laws governing the transportation in and out of the country of human remains. Most of these countries require embalming before they will accept a body. This includes Israel as well as many of the Muslim countries.

It appears a contradiction of standards for a province or country to prohibit or restrict the entrance of such items as plants and animals across its borders but to freely permit the transfer of unembalmed or improperly containerized human remains across those same borders.

We would like to include in our written submission today a further recommendation on this matter that would include standards on the acceptance of human remains into our province and would safeguard the health and safety of the public and employees in the bereavement sector. The amendments we have suggested are essentially the same as those that presently exist in the Funeral Services Act and are similar to the requirement of most states and countries for shipping human remains.

Turning to the next amendment that we hope the committee will consider, I must express the association's concern over the possibility that we might have inadvertently lost our quasi-self-regulating status. In the legislation that is before you, no mention is made of the number or proportion of lay members who can be appointed to the Board of Funeral Services.

The previous legislation outlines exactly the composition of the board and ensures that the majority of its members will be licensed funeral directors. However, the ministry has indicated to us that it wanted some flexibility in the size of future boards and therefore left appointments to be prescribed by regulation.

We do not disagree with the need for flexibility. However, our members

feel strongly that licensed funeral directors should always have a say over the conduct of our profession in Ontario. We would like to ensure that there is at least one licensed funeral director on the various committees of the board created by this legislation; for example, the executive, licensing, complaints, discipline or compensation fund committees. The object of flexibility, as well as the guarantee of proper representation, can be achieved by amending Bill 30 so that the majority of members of the board are funeral directors.

Another issue that is of concern to our profession is the issue of arranging a funeral. It is our belief that when a family member or person contacts a funeral home to make arrangements for an at-need funeral or a prepaid funeral, he expects to deal with a fully qualified professional funeral director.

As Bill 30 is now written, the consumer in Ontario has no assurance that although he is paying for professional services, he will be dealing with a funeral director educated and experienced in the sensitivities of meeting with people to plan for the funeralization and disposition of a relative or friend.

Funeral directors spend a great deal of their academic time in the funeral service education course at Humber College and during their in-service training preparing themselves to understand and effectively assist people in dealing with the death of a loved one. To leave the responsibility of arranging a funeral to an untrained, unqualified and unlicensed person would be an irresponsible act to the unsuspecting funeral-buying public in Ontario. We believe that our definition of "arranging," as found in our submission, would protect the Ontario consumer.

The final matter we feel the committee should deal with is the question of trade services. In our view, the government has failed to close the circle by not requiring licenses for this group. The principle that seems to be embedded in the legislation is that all parties who handle human remains in the bereavement sector should be licensed. Health professionals are licensed by their respective boards, while police or other officers of the crown are regulated in their conduct.

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Under Bill 30, funeral directors and transfer services will be licensed. Logic appears to demand that trade services, even if they are not dealing directly with the public, should be licensed or registered to ensure ethical conduct, respect for human remains and compliance with environmental and occupational health laws. Our written brief outlines the problems that can arise from leaving trade services out of the legislation. The OFSA believes that by amending the legislation in the manner we have proposed, one of the purposes of the bill can be completely fulfilled.

As I conclude my remarks, I would like to summarize the position of the Ontario Funeral Service Association. We are pleased that we have been allowed to appear before you so that we could express our general support for Bill 30 and Bill 31. We have asked that you consider amendments in five areas which we believe will strengthen Bill 30.

First and most important to us, we would like to see full separation between cemeteries and funeral homes and transfer services. We would like to see a requirement for the safe handling of human remains that are to be shipped into and out of Ontario. We would like to be assured that the majority

of appointees to the board of funeral services will be funeral directors. We would like to have "arranging" included in the definition used in the legislation and we would like trade services to be licensed.

Throughout these hearings, our members will be here as resource people. I would invite anyone on the committee to feel free to speak to us or question us at any time. We invite your questions.

The Chairman: A number of members have indicated an interest. We have about 10 minutes. I would urge members who speak to exercise some self-discipline.

Mr Farnan: Very briefly, before I ask the one question, I would like to get a procedural matter out of the way. That is, there are a number of questions the monument builders have a concern with and which I think all members of the committee are interested in hearing answers to.

I know my colleagues in the Progressive Conservative Party and our own New Democratic Party representatives on the committee, as well as government members, want to hear the answers to these three questions that are at the bottom of the sheet I have just distributed. It could get extremely boring with these questions being repeated consistently. However, my colleague in the Conservative Party, Mrs Cunningham, has also indicated that she will be referring to these issues as well. With the permission of the chairman, I will give this out to each group as it appears and occasionally will ask those questions.

To this delegation, I just want to ask this question. Your views reflect the views of the New Democratic Party. We think it is constructive, positive legislation, but we believe the principle of full separation must be fully enunciated in the legislation. You have expressed your concern for the separation between cemeteries and funeral homes. How would you express that? When you talk about full separation, are you talking with the same conviction when it comes to monument builders?

Mr Doyle: First, the minister addressed that concern this morning. We do see ourselves as regulated. We were dealing principally with the existing regulated bodies under legislation. One point we do emphasize in the product area is that we no longer are going to have a monopoly in that area in terms of caskets and things. That is wide open in the marketplace as well, the product area.

I have only seen the amendment quickly. Our chairman Rob McKinlay of the legislative committee has had more time to look at it. He may be prepared to comment at this point on the proposed amendment.

Mr Farnan: I would appreciate it.

Mr McKinlay: We have consulted with the Ontario Monument Builders Association people over a number of years and have a great deal of sympathy for their concern. Our concern has basically been the cemetery/funeral home separation.

We also understand that in areas of Ontario where the monument dealers do not have a representative, it would be some inconvenience for the citizens of that area not to have the access through a funeral home or a cemetery for that service. I am pleased to see that now OMBAs has included a paragraph that would look after those people. On that basis, we would be more than

sympathetic. We have a great deal of understanding for what they are looking for, but we have to be careful that we do not endorse a position of exclusivity when in fact, as Andy Doyle just mentioned, we have lost that part of funeral services in the exclusivity of selling caskets.

Mr Tatham: I appreciate your brief. I have read it in full. On this matter of competition you mentioned, \$3,342, is that—

Mr Doyle: The Board of Funeral Services recently did a survey across the province and that was its figure for a traditional funeral in Ontario, and it is a very current figure.

Mr Tatham: If a person goes in for a funeral, do you have a price list that is printed out so the person would know exactly what it would cost from the time the body was released?

Mr Doyle: We do in our firm at present, but the new legislation will provide that it is mandatory for all funeral homes to have available itemized price lists both of their services and, in our instance, of their merchandise as well.

Mr Tatham: Would that include the cemetery plot?

Mr Doyle: No. That is not an area we are permitted to sell.

Mr Tatham: Or a stone or monument?

Mr Doyle: I suppose if the firm offers monuments; it would generally be treated as a separate item, though, from the purchase of the funeral itself.

Mr Tatham: Would it not make sense for a person to have the opportunity to buy them all together?

Mr Doyle: It may, but it also sometimes muddies the water as to what they are paying. I think there is a movement in consumerism to identify the prices for the components they are buying. I think the consumer is entitled to that knowledge. It works very well when they realize that a lot of what we are doing for them is a service component. We establish what the prices are for that. They select their casket based on the price just for the casket itself, and indeed for other disbursements or a monument they would know what they are paying for that. As a consumer, you would generally feel more comfortable having that breakdown at least available to you.

Mr Tatham: You would like to be able to go to a funeral director and say, "What is it going to cost in total?" would you not?

Mr Doyle: I think we can give a fair estimate of that, but a lot of it depends on your selection of what individual components you wish.

Mr Tatham: But you can get the funeral and then the cemetery plot and the monument right at your place.

Mr Doyle: No. Generally, the cemetery plot is only available through a cemetery and I think the new legislation moves to further enforce that.

Mr Tatham: You think that is the best way, then.

Mr Doyle: Personally, I do and our association does, yes.

Mr Tatham: One other question: Have there been any problems in trade services?

Mr Doyle: They are very new and are not recognized under the legislation. I think at the moment there is some confusion as to what they may or may not do. The government, I believe, recognized a segment of the population that wants basic disposals. I do not think it was always correct but I think the perception often was that when you went to a traditional funeral home and asked for the basic services you were sometimes upsold or there might be attempts by the funeral director to pressure you to buy more.

By recognizing transfer services and limiting, as the new act proposes, what they are able to do, I think it is going to protect the consumer so that immediate basic disposition will be available. Hopefully, in that competitive environment, it will also encourage funeral directors to keep their prices reasonable in competition.

I would point out that the services of a transfer service are presently available, should be and will be under the new legislation, in all funeral homes across the province.

The Chairman: We are basically out of time and I want to make sure the other caucus has an opportunity for a question.

Mrs Cunningham: I will defer to my colleague.

Mr Wiseman: I was wondering about embalming. This morning the ministry officials mentioned that bodies coming into Ontario, as I understood it and maybe I was wrong, all had to be embalmed, but in some areas of Canada that is not the case. What would be your worry about that? I know they have to be now. What is your concern? Is AIDS or certain diseases that the body you are handling might have contracted your worry there? What does embalming do, rather than shipping the body as is, do that would be a protection for you?

1510

Mr McKinlay: I will respond to that. First, embalming is the prevention of putrefaction of the body and also renders the body free of disease. Our concern is that presently in the law there is a requirement that a body must be embalmed before it is transported outside of our province. We feel that was initially put in there to prevent us from having the embarrassment in Ontario of shipping a disease someplace else in the world.

We now also have a concern, and feel it should be addressed, that bodies coming into Ontario from around the world, where there are many various strains of diseases and viruses—we do not feel, as funeral directors and people working in funeral service, that we wish to be exposed to that unknowingly. That in turn exposes the general public.

When we dealt with the Ministry of Consumer and Commercial Relations, we had a meeting with the Ministry of Health, and Dr Jackie Carlson, who was referred to earlier this morning, admitted to us at that time that she has no concern about a dead human body just lying there, but she is concerned about the fact that if there is any fluid leakage, there is potential for an

occupational health concern. That would involve airport workers and removal service people. There is some risk if there were contamination by these fluids.

Mr Wiseman: Could I just clarify then. When shipping bodies out of Ontario, they have to be embalmed.

Mr McKinlay: Presently, but not with the new law.

Mr Wiseman: But coming into Ontario, there is no requirement in the new act that they must be. I thought maybe it was the other way around.

Mr McKinlay: We feel that the citizens of Ontario should be responsible and protected at the same time. We should be responsible that we are not shipping problems to other jurisdictions and that we should not be receiving problems from other jurisdictions without the protection of either embalming or proper containerization. We feel that it is more than just a public health issue; it is an occupational health issue.

The Chairman: Mr Doyle, thank you and your colleagues for your presentation to the committee.

The next presentation is from Arbor Capital Inc. Is Arbor Capital here? There have been some exhibits tabled with the committee, exhibits 2, 2A and 2B. Mr Scanlan and whoever is making the presentation, perhaps you would proceed. The next 30 minutes is yours.

ARBOR CAPITAL INC

Mr Wilson: My name is Philip Wilson. I am the president of Arbor Capital. Mr Scanlan is the chairman. On my left is Martin Calpin, a partner of Deloitte, Haskins and Sells Ltd, who are the auditors of our corporation. We thank you for the opportunity of permitting us to attend today.

By way of brief preamble, we are impressed by many provisions in Bill 31. There are three points that are of considerable concern to us. These are addressed in the brief that has been delivered to you and your colleagues. In view of the pressures on time, we would like to address you briefly on two of the topics and we will obviously deal with any questions on any of them.

The two topics we would like to speak about are the impact of sections 23 and 24 upon us and upon several other active cemeteries in the province. On sections 23 and 24, we are authorized to speak on behalf of Westside Cemeteries, which has six cemeteries from south of Barrie and around the Toronto area, Beechwood Cemetery Co in Ottawa, which has one major cemetery, and Pinecrest Cemetery Co Ltd of Ottawa, which has three cemeteries.

As to the issue of sections 23 and 24, it turns on accounting considerations and for that reason we have asked Mr Calpin of Deloitte, Haskins and Sells to present to the committee his view of the impact of these provisions on us and these other cemetery corporations. Thereafter, Mr Scanlan would like to address you.

Mr Calpin: I will deal primarily with section 23 of Bill 31. Section 23 requires cemeteries to repurchase interment rights at any time before they are used. Apparently, the intention presently is that the repurchase price would be 50 per cent of market value. The issue here is, what does this do to Arbor Capital?

Unfortunately, it gets us into some rather arcane accounting territory because presently companies that are in the pre-need cemetery business record as sales the contracts when they are signed. The contract may cover a number of items, interment right, burial plot, the opening and closing services and a marker or monument. They would all be part of the package. These items, when the contract is signed, are recorded as a sale.

In my opinion and in the opinion of the company, and also in the opinion of Price Waterhouse, the auditors of Westside Cemeteries Ltd, one of the cemeteries Mr Wilson talked about, section 23 will mean it is no longer appropriate to record this contract as a sale. The sales determination will have to await the delivery or the use of the particular item. In the case of the lot, it would entail the use of the lot, which on average means a period of 12 years before one can recognize the revenue from this contract.

What does this mean? The financial people at Arbor reworked last year's numbers for Ontario. It turned the results from a reasonable profit to a substantial loss. The implication of this, when looking also at next year, is that it is the same scenario because the company cannot record this revenue. The revenue has to be deferred. The implications for financing the business are very, very profound. The company basically, in acquiring and developing land for cemeteries, uses the facilities of a number of the major banks and is a heavy borrower from these banks. The implications of not being able to record this revenue as a sale would mean the company would be offside with various debt covenants. The fact that it is showing losses would mean it would be very difficult to obtain financing. In effect, this one provision affects the viability of the whole pre-need cemetery business.

1520

I should say that the ministry has a different view of this. The ministry has written to the Institute of Chartered Accountants of Ontario and asked: "Is this really what happens? Is this what the accounting rules say?"

In the Institute of Chartered Accountants' handbook where these rules are contained there is a clause that says that if a purchaser has the right of rescission of a contract, you cannot record that as a sale. That appears to be where we are here.

There is also a provision that says that if there are returned goods, if you can make a reasonable estimate of the amount and the amounts are not substantial, you can record a sale. This is aimed at the normal trading concern that may be selling toasters. They sell a couple of hundred toasters and after the end of the year they may get five back because they were overshipped or there were quality problems and so on. There is this question about making a reasonable estimate of returns.

What the ministry is saying is that this returns section would apply in this instance and in my view it does not, in the company's view it does not and in Price Waterhouse's view it does not.

It will be interesting to see what the Ontario institute has to say on the matter. This letter apparently will be forthcoming later this week or next week, but the Ontario institute is not in the business of setting accounting standards. It cannot set accounting standards. It cannot even interpret them. This is the issue.

As far as I can see, and as far as the company is concerned, this provision in section 23 does affect the viability of the pre-need cemetery business. I cannot see where companies will stay in this business if they cannot record the revenue for 12, 15 or whatever number of years.

In summary, the bill will essentially kill the pre-need cemetery business. That may be what the legislators had in mind, but that is the result.

Mr Wilson: In all our long experience of dealing with concerns from consumers and others, this topic of a unilateral, unlimited right to sell a lot back to the cemetery has never come to my attention as a major problem. Once in a while a lot owner leaves the country. We have a policy, as do the other major cemeteries in the province. We have a complete money-back undertaking within 30 days with no questions asked and we are delighted to see that is going to be made law under Bill 31. Thereafter, we provide up to 65 per cent of the purchase price. We have had that policy in place for years. We are obviously happy to live with it as a policy. But if legislation mandates any mechanism for refunding at any time, it will have the consequences Mr Galpin has enunciated.

With that, might I ask Mr Scanlan to address the committee.

Mr Scanlan: I am the controlling shareholder of Arbor Capital and the shares are held in a family trust for my children, all of whom work for the company. I would estimate that very close to 100 per cent of the shares are held by Canadians and in Canada. Over the past years, other major shareholders have been institutions that had long-term considerations from an investment point of view.

I would like to discuss concerns with section 29 and how they will affect our customers, the public and our company. Section 29 was designed to prevent the unilateral, uninvited contacting of potential customers by telephone and in person. We accept that contacting at random by telephone or in person could cause distress and therefore should not be done.

Subsection 29(1) says: "No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made."

We agree and, in this instance, we have always supported this prohibition. But I must tell you how we do our business. During the past 40 years, since we started with one cemetery in London, the public has accepted our cemeteries, their design, which when introduced was of a different pattern than upright memorials because they were flat memorials, and beauty. We extensively landscaped areas with flowers, shrubs and trees.

Sales were made pretty exclusively for several of those early years on a pre-need basis. We believe that pre-need is a greater service, although it was new at the time. Because the pressure of time and grief was not present, there was certainly less financial strain and members of the family, that is the husband and wife, ordinarily would make the decision together. They had an opportunity to compare and to inform themselves. On this basis, over 150,000 adult families in Ontario made contracts with us. That would be about 300,000 adults.

We did this quietly in the various cities that we grew and expanded into and we built many lovely and beautiful cemeteries. We took over several that

were in financial distress in that process. We mainly approached and sold two spaces, that is, to the husband and wife, because early on, even before the age of consumerism, we recognized that children grow, have families of their own and it is not possible to plan that indefinitely.

Today we find these children have grown and many families, contemplating adult children with their own families now, wish to enlarge their original two-space area. This is a private matter, particularly if a death has occurred at this time, and they prefer us to contact other family members or in fact friends. There are finances involved, there are maps, benefits to the program and there are contracts.

The family recognizes that these things can best be done by us, and it is true. This enlargement of family estates with children that began many years ago has taken place and is a very common phenomenon. In fact, we have a service that examines the status of the lot at the time of a death to see if it is in a sold-out area which, if 10, 20 or 30 years have passed, there would be something for the survivors to enlarge upon. We also find, even in our older cemeteries, such as the ones we started in the late 1940s in London and Hamilton, and then in the early 1950s, that we are doing this service with grandchildren involved.

But to this situation there is another problem. I would like to read some excerpts from a letter that Father Lima, pastor of St Joseph's Portuguese Church, wrote to Gregory Sorbara recently. I am just skipping the introduction, but he says, "I can understand that telephone calls for this purpose"—which I have mentioned—"could cause distress if they happened to be made to a family where a death was imminent or had occurred recently. However, I see no reason to prevent such telephone calls if they are made at the suggestion of someone who knows the circumstances of the family."

He goes on to say, "Because we feel that a cemetery is a visible symbol of our Portuguese heritage, my church has arranged for an area of the Glen Oaks Cemetery"—which is a rather new cemetery between the border of Mississauga and Oakville between Dundas and Burnhamthorpe—"...reserved for its members. In order to encourage the use of this section I would like the staff of Memorial Gardens to visit my parishioners"—and the parishioners of other Portuguese parishes—"and tell them of the services available to them. Could you please make this possible and within the guidelines of the proposed law?"

Father Lima is a well-known Portuguese personality and he does and has mentioned this on his TV program and, of course, in his church.

1530

I would like to read subsection 29(2). It says: "No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made."

This means that I could not talk to you—I think you could understand that—since I own a cemetery. Conversely, you could not talk to me and make that suggestion. Father Lima could not talk to his parishioners as he is doing or has done. In fact, no one can talk to anyone.

This is a particular problem for us because a cemetery is part of a visible symbol of a common culture, a heritage, a bond that is important to

many affinity groups in all the cities that we operate in—not in every one as far as making a section is concerned. Members of such groups, whether they be church-related, heritage-related or lodges, etc, gather together at the time of a member's death. We have built many areas for 15 different groups in the greater metropolitan areas of our cities.

I would just like to read the names of some of these groups so you will see the dimensions of the problem: Chinese, Koreans, Japanese, Muslims, Zoroastrians, Romanians, Portuguese, Catholics, Ukrainians, Jewish and Masonic groups from several cities.

More dramatic is this point here. We are in the process of completing the construction of a cemetery near Toronto in Markham. It is by the Cathedral of the Transfiguration. The Slovak bishop, Bishop Resnick, and the Ukrainian bishop, Bishop Borecky, met with me about three or four years ago. They said that around the cathedral they would like to make it exactly like the cathedral it was modelled after in Slovakia. They have asked us to contact their members after we build the cemetery, with the idea that these people would find around the cathedral a common heritage to identify with. Upon that suggestion, we have acquired 100 acres next to the cathedral, we have constructed it and it will probably be ready to receive burials any day now. We will put the grass in late this fall.

The section I referred to says that I cannot contact by telephone the adherents of Slovaks and Ukrainians for the purpose that we did. I know of no other way that we could contact these people effectively to run a business as we must and to give the service they desire. The cemetery is almost completed. It would go into the next stage, that is, the basic grounds, the enormous work involving roads, drainage and 45,000 truckloads of earth to give it a rolling contour. But a provision of not allowing us to contact the people in a manner that would be acceptable to all concerned would certainly cause us to pause.

The total prohibition would be serious. Effectively it would shut down our pre-need effort, for we do absolutely depend on pre-need for our vitality. At-need business does not occur in our company, mainly because, as an exponent of pre-need over the many years, we find there are others in the total business who feel that pre-need is not the best way of doing it and that at-need offers more opportunity.

There are other methods of advertising. There is TV and there are brochures, but all of those have been tried by many people in this cemetery business. We find them to be costly. We have found them to be not effective in sufficient volume. They have a great value for image, however, and they do get the name around. Insurance people, as you well know, sponsor many kinds of major events—theatre, sports—but the selling goes on with the salesman and the representative of the insurance company. It is usually a recommended contact that allows that business to prosper.

I would like to read to you the proposal that we would make as a solution to this dilemma. It is very real: Permit contact by telephone of an individual recommended to the contractor by a third party who will receive no financial benefit from the contractor and who is acquainted with that individual in some form, such as a priest or a minister recommending a parishioner or a lot owner recommending his own family, relative or friend. This would not be inconsistent with the intent of the proposed legislation and it would allow, which the legislation again intends, the flow of information to consumers.

In that area, I would like to conclude by letting you know that I have been in this business for over 40 years. Long before the Loewen organization entered into Ontario or SCI, Service Corporation International, or Arbor Capital Inc became a factor, cemeteries had price regulation. That is, anything they sold was registered with the various authorities over the many years, which were different ministries from Health, Consumer and Corporate Affairs or Environment, going back many years.

Along with price regulations, for most of this time there were no funeral homes permitted onsite. At this point in time, approximately 99 per cent of cemeteries were church-related or municipal, and at that time the law had nothing to do with corporate concentration. Certainly, it had nothing to do with service to consumers, but it had a great deal to do with special interests, protecting the interests of special groups in this section.

I would like you to be aware that today the dollar volume expended at the time of death, in the order of who receives it—the majority is funeral homes, next is monuments and last is cemeteries, the most regulated part of the industry—even today, 98 per cent of all cemeteries in this province operate in the red. They do not make money; they lose it. I understand that we are talking about many small cemeteries that are located in very small communities, but I must give you the picture.

It is not an industry noted for its return on investment or for operating profitably. Some of these cemeteries are very large and have huge annual deficits in excess of \$1 million. It is a difficult business. Since cemeteries are 98 per cent municipal or church-owned today, restrictive legislation and price controls have to have a reason, and I am not getting into that area at all. I would like you just to know some of the fundamental facts of the operation of the industry you are trying to regulate.

Some 20 per cent of the market is now held by commercial cemeteries. I do not know the growth rate but, of course, it has been a steady growth rate for the last 30 or 40 years. There is a reason for that. Cities no longer want to carry on the financial burden and neither do churches. You may have an opportunity to question the leader of one of the largest church groups in the cemetery business on that point.

I can tell you that within the last several years, I was asked by William McLean, the mayor of Ajax, to build them a cemetery, for they have none. They wanted to move a pioneer cemetery. We bought the land, spent a great deal of money and built them a cemetery. We will sit there for many years, because those who can direct business, direct it away from us, despite the fact we are the only cemetery.

1540

Mayor Ken Whillans in Brampton asked us to build a cemetery. There are no municipal cemeteries left in the town; in fact, we now have the only operating one. I can assure you the council and the mayor were very pleased when we bought 100 acres of land to take care of their business for years.

In Cumberland, a suburb of Ottawa going east, Peter Clark, the mayor, asked us to build a cemetery. We bought the land and started development. I would say that may be problematical for the future. The Burlington cemetery was approved by the lady mayor and the council with great enthusiasm about eight years ago.

Similarly, in Oakville we were asked by the mayor and council to build a

cemetery. We did. We built a big one, a huge one, 200 acres. We have not got it all built, but we have built there very substantially. They asked us to build special sections for the people who are moving into the community with different backgrounds who insist upon upright sections and things of that order.

Mayor Anthony Roman in Markham was the gentleman who asked us if we would build a cemetery for the Slovaks, Ukrainians and the general public up there, I might add. We have many of these groups asking for special sections already, the Chinese and Koreans to name two. Mississauga and Scarborough have bylaws: no more cemeteries. Scarborough has had it for years. Nobody wants to get into the business.

Municipalities recognize the difficult financial strain on cemeteries and some of the legislative restrictions that perhaps prevent a better operating position. I know many of the religious groups that have cemeteries are considering their position because we were asked by the Catholics and the city of Kingston to build them a cemetery just two years ago, which we did build.

That concludes my remarks. I hope I have given you a little insight into the business of being a cemetery operator. Of course we have a very fundamental concern with the section that is designed to prevent us from operating on a pre-need basis.

The Chairman: Thank you, Mr Scanlan, Mr Wilson and Mr Calpin for your presentation. The committee appreciates it.

Mr Dietsch: Perhaps for the benefit of the individual presenters who just presented that brief, I think it should be noted that they used up all their time in their presentation and that is the reason there were no questions.

The Chairman: Yes, I do not want to tell the groups which come before the committee how to use their 30 minutes. If they want to make it all in the presentation, that is their choice.

Mr Dietsch: Absolutely, but they sort of looked a little bit in shock that we did not ask them any questions, and I wanted to make that clear.

The Chairman: Quite right. We do like to be consistent.

The next presentation is from the United Senior Citizens of Ontario. Is Mr Mansfield here? This is exhibit 9. Mr Mansfield, we welcome you to the committee and the next half-hour is yours to do with as you please, within limits.

UNITED SENIOR CITIZENS OF ONTARIO

Mr Mansfield: My name is Alex Mansfield and I am president of the United Senior Citizens of Ontario, representing the interests of senior citizens in the new Cemeteries Act.

First, I would like to thank you on behalf of the USCO for giving me an opportunity to speak to you today. Our interest in the bill is rather painfully obvious. Stating it simply, the seniors of this province are the consumer group who will most be affected by this act because seniors are the consumer group that is most often confronted with death, a law of nature, I am

afraid, and one that cannot be changed. We have to deal with the details of death more often than anybody else, save the funeral directors, cemeterians and monument builders with whom this act deals.

We are more concerned, as a group, with living and keeping up the quality of life than we are with dying. To that end, the USCO have had a great deal of experience lobbying government. In Ontario, we fought for, and with the co-operation of the government, obtained free OHIP, a good drug plan, sales tax rebates and property tax rebates for seniors. We have, in short, an excellent track record of representing the views of senior citizens at various levels of government.

The point here being that we are a very vocal group, about 300,000 strong, working in 1,300 affiliated clubs throughout Ontario and, as we like to point out, our members are old enough to vote.

I am here because we are interested in how people are coping with the death of a friend or how family members are treated by the bereavement industry. Seniors are especially vulnerable to sales pitches that offer their deceased love one the best of everything. Unfortunately, seniors are often the least able to afford the best of everything.

Grieving seniors are dealing with more than just the loss of a person from their life; they are dealing often with a loss of income, a loss of emotional support, as well as the loss of the person who lent help and companionship. On top of that they must organize for the funeral and make burial preparations. The last thing they need is a high-pressure sales pitch or to feel bad about not spending more money for the "best money can buy" for their loved one.

The bill addresses our concerns about high-pressure sales pitches: We have received so many letters and phone calls from seniors complaining of this tactic. The bereavement industry should not be allowed to use the same methods of selling as other industries. After all, they have a guaranteed clientele. Everybody will use their services some day. A grieving consumer is a most vulnerable consumer. We are overjoyed that telephone and door-to-door solicitation has been banned.

I was somewhat of a victim of this device myself. My daughter took a phone call from a sales lady who mistook her for my wife. My wife had died recently and my daughter wanted to save me the grief of dealing with this lady myself. About two weeks later, a letter came addressed to my dead wife. Imagine my state of mind when I opened it and found it was offering her a package deal on her death. It did not go over very well.

Needless to say, I personally am very happy with that part of the bill that bans telephone and door-to-door solicitation. However, I am here to turn your attention to those parts of the bill that we feel do not protect the needs of senior citizens as adequately as they should.

A great many seniors must make do with low and fixed incomes. A couple of dollars a day can make the difference between a good meal or a Kraft dinner. We, as a group, are very sensitive to price changes. It is in our interest then to make sure that the services we must use, the bereavement services among them, are affordable.

We do not have an option when it comes to death. It happens inevitably. We do have options when it comes to deciding how we would like our death or

the death of a loved one to be treated. Do we want to be buried here or there? Do we want a huge monument or a modest one? Do we want a funeral in this church or that? We want to keep these options open.

1550

I heard from a man who bought a package deal upon his wife's death. He wanted a special monument placed on her grave but felt that if he did not conform to the package, which included a plot, a funeral and monument, then maybe his wife's grave would not be taken care of as well as the other ones that had the package deal's monument. Of course it would be against the law for the cemetery to discriminate in that way, but the gentleman in question was still intimidated. He was afraid not to take the whole deal.

We do not want seniors to feel that they are being held hostage by the bereavement industry. We want to see more competition in this industry to ensure that a wide range of options is open to our community and to ensure that prices are kept down. We no longer have to fear the hard sell, but we still have to concern ourselves with buying the goods and services offered to us by the bereavement industry and we want to make sure that there is a level playing field for the different sectors of this industry to compete on. We want to make sure that they are working for us and not for huge profits at the expense of a group of people who have to factor in the cost of funerals, plots and monuments while making up their grocery bill.

Joyce King played a very active role in the development of this bill. She met with the then Minister of Consumer and Commercial Relations, Bill Wrye, a number of times and with civil servants from the Ministry of Consumer and Commercial Relations. She made a presentation to the Liberal caucus and we debated the merits of Bill 31 at great length among ourselves and in our newsletter, The Voice. Both Joyce King, the USCO's former president, and myself have received letters that impressed upon us the need for senior citizens to be involved in further amending Bill 31.

Our members want to ensure that they will be treated by the bereavement industry as they have been in the past. They want a maximum number of choices at the least cost and they want as little harassment as possible.

The USCO feels that a legislated three-way separation of the bereavement industry will work best to guarantee these needs. Three-way separation—that is, that funeral directors be allowed to sell only funerals, that cemeterians be allowed to sell only cemetery plots and that monument builders be allowed to sell only monuments—would keep independent and community-based businesses alive. It would level the playing field, so to speak, that these sectors of the industry compete on. It would create a level of competition which would keep prices low and give the consumers a variety of choice. We want to avoid a situation like that in British Columbia where huge vertically integrated corporations would have the balance of control in the bereavement industry. That takes a certain amount of spending control away from the consumer. That takes the choice away from the consumer.

Try to imagine you cannot get what was requested in the will of a loved one who has died, because there is only one provider of a service in your area and he does not have what you need, or he is the only one who has what you need but the price is so high you cannot afford him, or he will sell you a package deal but one specific request does not quite fit into the way he normally does things.

We are talking about a dramatic occurrence in anyone's life. It has the

same impact as a wedding. I do not mean to be morbid, but it is not hard to find what you need to have the wedding you want. People have a right to go out of this life the way they want to and in a way that will not cripple the budgets of those who survive them.

We want the smaller players in the bereavement industry to survive. We feel that now, during these presentations to the committee, is the proper time to address the future of this industry and the effect it will have on our pocketbooks.

There are places in this country where the concentration of the industry is already leading to trouble. The consumers association in British Columbia, for instance, says that the process of concentration of the bereavement industry is too far gone for it to manage. Consumers have less choice and they also have to put up with hard-sell tactics. Independent providers of bereavement goods and services make up only a small and declining share of the industry in BC. The community-owned services are heading for extinction. We do not want the Ontario bereavement industry to be dominated by three or four large corporate entities who own cemeteries, funeral homes and monuments and offer limited-choice package deals.

It is generally agreed that it is distasteful to do any hard selling of bereavement goods and services. So competition has to be ensured by means of separating the sectors of the industry and insulating them from each other. A healthy level of competition within each sector of the industry and lower prices would result. We believe that writing a three-way separation clause into the new Cemeteries Act will make a good bill even better.

We understand the bill makes provisions for the separation of cemeteries and funeral homes. They are not allowed to be on the same site, they are not allowed to have a joint board of directors, they are not allowed to have a joint marketing plan and they may no longer give referrals to an affiliated service without stating the affiliation outright.

We applaud the effort to preserve the independent players in these two sectors of the industry. Why not, then, go all the way and protect the monument builders, too? Why not prevent the other two sectors from selling monuments? This would ensure a further measure of protection for consumer choices that would no doubt keep costs down.

There is one issue that concerns us, too. A while back there was a proposal by the minister in a press release that mentioned a board that would be set up to advise the minister on the bereavement industry. Nowhere in this bill is such a board provided for. We would like to see this board come into existence. We had hoped that a consumer body, such as ourselves, would be represented on the board to oversee and advise on changes that occur in the bereavement industry. We would also like to make any board of this nature a permanent body so that our voice would be heard on any future issues that come up concerning the bereavement industry.

Everybody ages and everybody will have to deal with this industry at one time or another. We believe that all decisions made concerning the bereavement industry will need delicate treatment due to the nature of the industry. Consumers are especially vulnerable when grieving and need to be insulated from an industry that stands to profit from that vulnerability. We need to be protected by a bereavement board disinterested in profit, a board that is interested only in ensuring that the survivors of deceased loved ones will be able to cope with the grief without having to worry about costs or confusion

derived from hard-sell packages, limited competition, corporate concentration and limited control.

The Charter of Rights and Freedoms gives us a set of rules that guarantee us freedom to live as we like. Now we are discussing a bill that will give us a measure of freedom to die as we like. We cannot afford to draw up the rules hastily.

The United Senior Citizens of Ontario want to congratulate you once again on Bill 31 and ask you respectfully to consider the amendments that we put forward to you today, namely, that the industry be legally divided into funeral homes, cemeteries and monument builders, that each part of the industry be prevented from competing with the others in the bereavement industry and that a permanent board with consumer representatives be set up to deal with future issues that concern this industry.

I thank you for your attention and I trust that you will give our ideas deep consideration.

The Chairman: Thank you for a brief that is very much to the point and very coherent. We appreciate that.

Mr D. R. Cooke: Thank you very much for your presentation and the sensitive way in which you have approached the subject. I would ask you if you would be prepared to make a speaking tour on behalf of this legislation because you have indicated in a very sensitive way the need for the legislation. You have also pinpointed some things missing in the legislation, and I can see your point on that too. I think we need to take a look at that.

1600

The Chairman: Do you wish to respond at all, Mr Mansfield? Mr Cooke, anything else?

Mr D. R. Cooke: No.

Mr Mansfield: Does Mr Cooke want a response? We talked to seniors about this industry. I do not know if I would want to go out into the community and talk to everybody about it.

The Chairman: No, I would not get sucked into that either.

Mr Mansfield: I am not that well versed.

Mrs Cunningham: I can see that you have been very busy, along with Joyce King, in once again assisting the government in their preparation of legislation. I want you to know that all of us appreciate that. I am just curious: Have you been talking at all to the Ontario Monument Builders Association, because it, too, is concerned about the organizational, three-way separation in this bill. Are you aware of their amendments that they want to put forth?

Mr Mansfield: I could not say that I am aware of their amendments. I have spoken to the different groups because of the interest in senior citizens and the amount of mail we have received which, as I said earlier, Mrs King had and I surmise presented to Mr Wrye when they met.

Mrs Cunningham: There is a small presentation here put together by

Mr Farnan that I will leave with you, because it does show the amendments that the monument builders want the committee to take a look at. It would be along the same lines, I think, as what you are presenting. Perhaps you could take a look at it and advise us if it is indeed what you hope we will consider.

There was one part, Mr Chairman, that I wanted you to clarify for both of us, if you would. It has to do with the committee or the board to advise the ministry on the bereavement business. There is a committee under section 4. I do not think it meets the same requirements as Mr Mansfield, presented to us, but I am wondering if you could comment on that, just in case we have met his concerns. It is on page 6.

The Chairman: This is Bill 30.

Interjection.

Mrs Cunningham: That would not be the same committee that OFSA is referring to as needing amendments; it is a totally different concept. Is that correct, where the committee should be advising the government?

The Chairman: I think it is different. Perhaps the government members, maybe Mr Haggerty, the parliamentary assistant, would know better than I.

Mr Haggerty: What was the question? I did not quite see the direction.

Mrs Cunningham: We have a presentation here today from the United Senior Citizens that it is concerned that decisions made concerning the bereavement industry "will need delicate treatment due to the nature of the industry." They talk about "a consumer body, such as ourselves, to be represented on the board to oversee and advise on changes that occur in the bereavement industry." They want to see a consumer body or representation on a board that was talked about when this legislation was being prepared by the government. You suggested, or the government suggested this would be a possibility, that a board would be set up. I am just wondering if that in fact is in the bill in any—

Mr Callahan: The Lieutenant Governor, certainly under Bill 30, can appoint someone other than a funeral director to the board, so it is open to—

The Chairman: Your question really should be answered by someone from the ministry who is responsible for that.

Mrs Cunningham: Can this board meet the requirements that the presenters have made to us? I think it is different, but I just want some clarification.

Mr Webber: The committee to which reference has been made in the presentation relates to an advisory committee which the previous minister in the press materials suggested be set up, and committed to set up, post the passage of this legislation, to address the various trends in the industry, with representation from all sectors of the bereavement area, with the hope that such issues could be settled in a somewhat more friendly environment, perhaps, than has set around some aspects of the current debate in the bereavement sector. To be clear, it is not a substitute for the Board of Funeral Services or any other committee which is mentioned within this legislation.

Mrs Cunningham: Perhaps now that we have had the clarification, I could ask a question to the representative. Was it considered to be part of the legislation at any time, or is this one of those committees that is set up afterwards maybe?

Mr Webber: No, there was a very definite commitment on the part of the minister to set the committee up, but it was not viewed that it needed statutory basis.

Mrs Cunningham: So the question should be put to the new minister, I suppose.

Mr Mansfield: May I ask a question, please? Who was the gentleman who helped me out? As I sat here and listened to you I thought you were carrying on a conversation among yourselves. I am not familiar with the gentleman who helped me there.

The Chairman: I am sorry. Mrs Cunningham asked a question about the board, and Mr Webber is assistant deputy minister for the minister responsible for this bill, Mr Sorbara, so he is the one who knows a lot of the details about the bill.

Mr Mansfield: Thanks.

Mrs Cunningham: Just in conclusion, it appears that the committee will be set up—at least the former minister stated that the committee will be set up—after the passage of the bill. Perhaps some of us could ask the question of the chairman to see if that is the intent of this minister. Obviously it is not the intent that it be part of the legislation. Perhaps it should be. Perhaps we should bring that forth as an amendment. We will look into it for you. Thank you for raising it.

Mr Callahan: Just very briefly, I took great cognizance of your comment about the fact, stating it simply, that the seniors of this province are the consumer group that will be most affected by this act, because seniors are the consumer group that is most often confronted with death. For that reason, I would like to see, and there is provision for, boards in both of these acts, and there is provision for the Lieutenant Governor in Council, which is the executive, to make appointments to that board. It might be very worth while and beneficial to have a person or persons who are seniors be appointed to that position.

I think if that were done that would allow you to do exactly what I think you and other seniors want to do, to make certain that you, as the most imminent recipients of that service, will be able to monitor it and make certain it is a quality service and that the entire industry conducts itself in a fashion that will be appropriate to meet that need.

I know it is not in the bill per se, but I would certainly want to go on the record as saying that if there are going to be appointments made under paragraph 4(1)2 and others like that, where persons who are not funeral directors may be appointed to a board by the Lieutenant Governor in Council, it would be very wise to have seniors, both male and female, on that board to give a sense of urgency and care about what takes place.

Mr Farnan: Basically, I just want, on behalf of the New Democratic Party, to thank Mr Mansfield for the excellent brief and to thank the United Senior Citizens of Ontario, through you, for what is a splendid brief.

Obviously, I think we have to take very seriously what you say, as one of the groups that has monitored this issue more diligently and carefully than any other group within the province. Your recommendations must be given that kind of merit.

1610

The amendments you have put forward are certainly consumer-oriented. The committees that must be established to watchdog this particular area of consumer protection must reflect strong representation from the senior citizens of Ontario.

Not only are you a large group, but you are an increasingly growing group. In the years to come I think all of the statistics indicate that despite the use you might make of bereavement services, the group will continue to grow in size over the years to come.

Of course, as you point out, it is a group that will vote and is of the age of voting. That was so nicely put. I think we have seen that there is indeed a force within our society, a grey power, that when governments have attempted to act in a manner that did not reflect the best interests of seniors there is a force that says to the government, "You'd better listen."

I detected a very quiet but serious address today and I hope the government got the subtle message behind your presentation.

The Chairman: Thank you, Mr Mansfield. As you can tell, you have given the committee a good presentation. They do appreciate it.

The final presentation of the afternoon is from Father Defoe, who is the secretary-treasurer and legislative co-ordinator for the Cemetery and Crematorium Association of British Columbia. We very much appreciate your presence here this afternoon, Father. We look forward to your presentation. This is exhibit 10, for members of the committee. Welcome, not just to Ontario, but to the committee, and we look forward to the next 30 minutes.

CEMETERY AND CREMATORIUM ASSOCIATION OF BRITISH COLUMBIA

Father Defoe: Ladies and gentlemen of the committee, I wish to express my thanks for this opportunity to present this submission. The points that I am going to make in this submission are summarized on page 2. Basically it speaks against a ban on telephone solicitation and provides a number of the reasons.

My background and qualifications to be here speaking are on page 25 of the brief. I feel a little like Daniel walking into the lions' den right now, as here is somebody, a resident of British Columbia, daring to appear in Ontario to speak to you on the subject of telephone solicitation when we have just apparently lost the battle in British Columbia to keep the opportunity of telephone solicitation.

While we have lost the battle, we are not prepared to concede the war yet. No jurisdiction in Canada or anywhere else in North America operates in isolation, and during the years that I was involved as a consultant with the Ministry of Labour and Consumer Services in British Columbia, I was in close contact with the corresponding office here in Ontario. We exchanged latest developments and things like this.

In the first few pages of my presentation there is a little bit of background, some of the factors, some of the political manoeuvrings that have gone on in British Columbia, where the minister announced on 7 May that he was going to introduce legislation providing for telephone solicitation and four days later reversed his position. In so doing there were a number of factors. The primary one, I think, was political expediency, but also, as he stated in the House when speaking to this, he mentioned that Ontario had introduced legislation with the same effect. So what Ontario decides now is going to help or hinder us as we proceed with our future efforts either to have the reversal take place in British Columbia or to seek other remedies, such as having the legislation struck down.

Going to page 7 in my brief, there are various ways of making prudent arrangements for the future. Some prefer to do it one way, some prefer to do it another. Some prefer a designation form where no money is involved and there is no financial transaction. We would insist, however, that others should not be denied the opportunity afforded by a telephone call to make, in advance, contractual and guaranteed arrangements for the disposition of their bodies at the time death occurs.

Further, we believe it is in the best interests of the consuming public, those providing death care services and indeed government if legislation facilitated rather than hindered the process by which any pre-need arrangements are made.

"If only we had made arrangements in advance." Families often say this while making burial or funeral arrangements at the time a death has occurred. To make important decisions immediately following the death of a loved one is very difficult. Enterprising writers, going anywhere from the 1940s to the 1970s, have compiled lists of the things that must be done on the most difficult day in a survivor's life when pre-need arrangements have not been made in advance.

On page 8 there are some listings of the advantages of pre-need arrangements and the disadvantages of not making pre-need arrangements. For the sake of brevity, I am going to assume that there is no need to convince anyone of the definite advantages of making cemetery, cremation and funeral arrangements in advance of need. Great benefits derive to the consumer who responds favourably to a telephone solicitation and enters into a contract for the purchase of cemetery spaces, goods and services for his future and certain requirements. Much of the success of the modern cemetery industry is due to the development and implementation of the concept of pre-need selling of cemetery lots, goods and services.

The proven, most efficient and cost-effective means for a cemetery or crematorium operator to offer these services is through telephone solicitation. There is a great deal of confusion about what telephone solicitation is. The minister in Ontario a couple of weeks ago issued a release in which he said there was a national task force being set up to look into the telemarketing industry, where it is indicated that there is a billion dollars worth of sales made each year over the telephone.

What do we mean when we speak of telephone solicitation? Many companies in general use the telephone to attempt to make actual sales. Organizations, charitable and otherwise, solicit donations or financial commitments during the call. Cemetery and crematorium operators do neither. For these, the telephone is used to make an initial contact, to inform the person answering of a public service that is available, and to offer, if desired and without

obligation, the opportunity of an appointment in the privacy of the home or at the cemetery to explain the services provided and the options open. For the reputable cemetery or crematorium operator, at no time during the telephone conversation is there any attempt to sell cemetery property, goods or services.

Statistics prove that a sizeable number of people appreciate the telephone call and the opportunity it affords to obtain information and make arrangements if desired. The product that we offer is the only thing everyone will need sooner or later. Even those who wish the least fuss in services—immediate disposition—can take advantage of the opportunity afforded to make those appropriate arrangements without leaving the often painful burden to others to carry out.

On page 10 there are some statistics. These may seem insignificant in relation to Ontario, with its considerably larger population base, but we suggest there is merit in the figures and most certainly in the percentages. These figures are based on the 1987 operations of eight cemeteries, five of which have crematoria as well. These all had pre-need sales programs dependent primarily on telephone solicitation. These eight cemeteries were owned by three of the large Canadian conglomerates, Service Corporation International, Arbor Memorial Gardens and the Loewen Group, plus two independent cemeteries.

The ranges shown in the percentages reflect the varying experience of the individual operations. It is interesting to note that of the gross sales that took place, 40 to 80 per cent involved pre-need arrangements. Also, we know that seniors can be upset. It is claimed that seniors do not want to be contacted. The studies we did showed that in the contracts of these cemeteries for that particular year, 44 to 69 per cent of the contracts were entered into by seniors after they had been talked to on the telephone. Regarding the burials or cremations that took place in those cemeteries that year, 42 to 75 per cent of them were as a result of lots that had been previously sold, the majority of them by telephone solicitation.

1620

We also conducted a survey of the people who had entered into contracts. At the bottom of page 10 and top of page 11, there are some samples of what these people tell us. It is obvious that these and other families felt a very real necessity to make provisions in advance of need.

Completely ignoring the fact that there are thousands of well-satisfied clients who, as a result of telephone solicitation, availed themselves of a pre-need program, advocates of banning telephone solicitation use a very incidental number of abuses of the system to support their case in the press and before various legislative authorities.

No one denies that a large number of people are annoyed by uninvited telephone calls. Personally, I confess that I too become annoyed at times with telephone calls, particularly when it comes in on my unlisted number or it is a recorded message that I have to listen to to find out what the score is, or when the caller persists in the presentation or worse still, argues after I have politely said I am not interested. Not all telephone solicitors, I maintain, are as well trained, sensitive or professional as those employed for that purpose by responsible cemeterians.

Why single out the death care industry for a ban on telephone solicitation? Political parties use the telephone to solicit memberships and newspapers use the telephone for subscriptions. They and others use the phone

for extensive questioning when conducting polls. Charities, registered and unregistered ones, use the telephone to solicit funds. Insurance companies call for just about everything, including establishing an education fund for my children when I do not happen to have any. And then there are the automatic dialling and announcing devices.

Are we who provide death care services to the community second-class citizens? Some answer that our product is not like other products. This is a sensitive area. It is extremely personal, a highly emotional matter. Is the product any less sensitive or emotional when death occurs? The suggestion is made to us that we should be satisfied to use direct mail. Is a letter which comes at a time of illness or other unfortunate circumstance any less sensitive than a personal phone call from a caring person?

Like many other so-called sensitive matters, things are changing these days. People are talking more about death and about arranging for death. Students in schools and colleges are interested; they take on topics having relationship to this. So I can ask whether this is all really so sensitive, emotional or personal that it must not be the subject of a telephone call. Or are there private interests, vested interests and anticompetitive forces that would seek to exclude some from using a recognized form of communication to conduct a legitimate business?

When Bill 42 is proclaimed in the near future, British Columbia will become the first jurisdiction of North America, to our knowledge, to ban telephone solicitation by cemeteries. Many individual funeral providers, and often their associations, favour continuing the ban on telephone solicitation and door-to-door solicitation and would extend it if possible. The reasons advanced in support vary from maintaining standards of professionalism to concerns for the privacy of the consumer. Whatever, the stance is more anticompetitive, motivated in some considerable measure by self-interest rather than consumer concerns, and calculated to enhance the bottom line.

Many funeral providers are reluctant to extend funds to help the public make arrangements in advance of need, preferring to have the public deal with them on an at-need basis at a time of maximum vulnerability when studies show the bereaved are inclined to spend more than when arrangements are made in advance, indeed often overexpending beyond their means.

If all other funeral providers are legally impacted equally, there is no incentive for the individual funeral provider to want to or to sell merchandise ahead of time. It costs money. There is a risk that the interest will not keep up with inflation. The gross amount of an at-need sale may well be from 25 to 40 per cent or more than a pre-need sale.

Some 30 years ago, when the entire industry was being condemned for the high cost of dying and for taking advantage of the public, many prudent cemeterians instituted and promoted pre-need marketing. The established funeral providers, on the other hand, remained adamant, thus giving birth to funeral and memorial societies with their low-cost services and the alternative immediate disposition.

In fairness, I must also say there are many funeral providers today that would welcome a relaxation in restrictions, including the removal of the telephone solicitation ban so that they could more easily assist the public in wise and prudent decisions in advance of need.

Other funeral providers, along with defending the ban, would see it

extended; and they promote that it should be extended to cemeteries, as it has been in our instance in British Columbia. The funeral association in BC took an ambivalent stand with regard to the telephone solicitation. What they said was that they wanted whatever cemeteries have, in the interest of fairness, equality and of playing on a level field,

To provide an appearance of fairness and to remove various subterfuges being resorted to, our association expressed to the government that we wanted the ban removed from the funeral industry. We did this for the common good and because we believe in the importance of pre-need arrangements. We did not and we do not concede that the two segments of the industry are on the same playing field.

On pages 15 and 16, I go into some detail on that, showing that there are some but very few similarities between the obligations of the cemetery and the obligations of the funeral side and that mostly there are differences. Unlike funeral providers, for example, who can phone in an order for two, four or a truckload of caskets to be delivered, cemeteries cannot order up a truckload of graves at a time or a bank of crypts or niches.

With substantial sums tied up in development costs for current requirements and in land banking for future requirements, it is just common sense and good business practice to recover costs as quickly as possible. Otherwise, financing these costs are a drain on the cemetery's cash flow and the costs ultimately have to be passed on as increased charges to the consumer, to their detriment and disadvantage.

For the nonmunicipal cemeteries, with no availability of a subsidy from the taxpayers if required, recovery as soon as possible is crucial. Here is where a pre-need sales program is the best medium for speedy recovery of these expenditures.

Other means are often suggested to us; they have been tried and found wanting. Direct mail is becoming more expensive and the results are just over one per cent. Ads with clip-out return coupons have less than a one per cent response. Incentives open to other businesses—bargain days, sales, discounts—are ruled out as totally improper and crude in the circumstances. A personal approach is necessary. This begins either because of a referral or with the initial telephone contact. From seven to 10 per cent of these contacts are concluded with mutually satisfactory contracts. Telephone solicitation has been established as the best and the most productive means.

The struggle with the issue of telephone solicitation is not unique to your government. Powerful forces are at work with the singular objective of restricting even the reasonable activities of many providing death care services. Under the guise of consumer interest, the thrust is basically anticompetitive. With governments or provincial and state funeral boards in nearly half of the jurisdictions in North America having already in place laws banning telephone solicitation for funeral business, various groups are lobbying in these and other jurisdictions for enactment or retention of similar anticompetitive legislation to restrict the operations of both cemeteries and funeral homes, not only regarding telephone solicitation but also proposing funding laws so extensive and so restrictive as to discourage any incentive to pre-need programs.

In so doing, these groups take a position contrary to that of comparable organizations of a national or international stature. Together with various regulatory agencies, these urge the widest possible access to information;

they support freedom of expression, freedom of speech, even commercial speech.

On the pages that follow, there are some quotations from some documents of the American Association of Retired Persons, which claims a membership of some 27 million people. They have produced a model law in which they have laid down guides for the operation of a pre-need funeral business. In the definition they use, it can include cemetery operation. While they do not say they are in favour of everybody paying in advance, and say that sometimes this is not even a good thing, what they are primarily concerned about is that if people do pay in advance, they be protected.

1630

While provincial governments grapple with telephone and door-to-door solicitations, the model law would offer the consumer the convenience of telephone and door-to-door sales while limiting the potential for harassment. The model law refers to the additional protection afforded by consumer protection laws and the cooling-off period substantially in effect in our Canadian provinces.

This is the best protection for seniors. It helps make arrangements in advance, and there is a provision in all our consumer protection laws that if they feel they have been taken advantage of, they have so many days to cancel the contract.

Then there is the testimony and the evidence from the Federal Trade Commission in the United States. The position they have should be of more than passing interest to us in Canada. Again, on page 19, there are a number of quotations from some of their literature and some of the letters they have written expressing their views on interference with communication:

"Effective communication of truthful commercial information by professionals to potential clients is critical to the functioning of competitive markets. Restrictions on solicitation may drastically reduce the information that is available to consumers in making purchasing decisions.

"When it is difficult for consumers, or they are unable to learn and compare prices and other options, competitors are isolated from competition and their incentive to keep prices down and to offer alternatives (in both the amount and quality of services) desired by consumers is reduced."

Further: "In the funeral industry, restrictions on at-need solicitation (after death has occurred or where death is imminent) may be justified because of the substantial risk of overreaching or similar abuses in such instances.

"Pre-need solicitation and the competitive process it encourages, on the other hand, may be especially important in the funeral industry because many consumers are not aware of the wide array of pre-need options available."

Further: "This does not, however, justify restrictions on solicitations that are overly broad, and hence, more restrictive of legitimate forms of solicitation than necessary to prevent overreaching or similar abuses.

"Restrictions that prohibit all pre-need solicitation, including situations where there is no overreaching or undue influence, may unnecessarily restrict the dissemination of information about pre-need sales to willing and competent purchasers.

"Prohibition of all telephone solicitation for cemeteries and funeral homes could be overly restrictive without countervailing consumer benefits."

Then there is a comment in the middle of page 20 from the Canadian Radio-television and Telecommunications Commission, the CRTC. They were asked a few years ago to ban these automatic devices and their conclusion was that it was not desirable. If it is not desirable to ban a machine from making a telephone solicitation, where is the justification for banning a personal telephone call?

In the negotiations our association had over the many years with the British Columbia government and in my involvement in initial drafts and work on the legislation, most of which has become law, we presented to the minister certain proposals and we also presented this Florida scenario.

The Florida scenario is an interesting thing. It is novel. It seeks a balance. The Florida law applies to any unsolicited consumer telephone call to a residential telephone number. It does not discriminate by singling out a particular industry such as cemeteries and funeral homes, and it prevents sequential dialling, the calling of unlisted numbers, for example. It also provides for people to put a notice in the telephone directory that no sales solicitation calls are wanted and adequate penalties are provided.

We used to believe and we still believe that those provisions plus the provisions we outline on page 22 have merit in considering and in balancing the rights of the consumer, the rights of the people who want to be phoned and the people who have a responsibility of providing those services.

As I see that I am running out of time, I am going to pass over those things. They take care of solicitation of sales. They talk about senior citizens' residences. They say that there should be rules to eliminate harassment or appearances of harassment, and of intimidation, things like that. There are other wise and prudent measures in there.

The Florida law has not been challenged yet on constitutional grounds, and because it covers all telephone solicitation, the likelihood is that it will not be challenged. On the bottom of page 23 and the top of page 24 there are some quotations from the way the Americans look at this business of freedom of communication, freedom of expression, freedom of commercial communication, even freedom of commercial speech.

While those things they have done, or their views on these things, have no normative value in Canada, there are substantial similarities in the constitutional principles of our two countries. With our formal Constitution, including the Canadian charter, in force only since 1982, Canadian courts and jurisdictions are extremely limited for Canadian law precedents touching on these matters. Decisions of United States courts are studied carefully, and not uncommonly in Canadian judgements there will be references to American practice among the list of cases considered and statutes considered, as well as specific citations at times.

Section 2 of the Canadian charter states, "Everyone has the following fundamental freedoms...freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." There is also in there provision for freedom of religion. Some churches consider burial a religious act and anything that would interfere with a church's contact with

its parishioners could possibly be challenged on the basis of infraction of freedom of religion set out in the Charter of Rights.

Is a total ban on telephone solicitation only for cemeteries and funeral providers consonant with the above-referenced freedoms? Are the provisions prescribed, or to be prescribed by law, for telephone solicitation by cemeteries and funeral providers within the reasonable limits that can be placed on these freedoms "as can be demonstrably justified in a free and democratic society," to quote from section 1 of the charter? We respectfully submit that they are not.

The Chairman: We have about five minutes, but I think that in view of the fact Father Defoe has come from British Columbia, members might want to extend that a little bit.

Mr Farnan: The question I am going to ask you is a little bit off the wall, but I think it might be worth putting on the table. You have heard the delegation ahead of you talking about seniors and their concerns. I think what they are really saying is that they want a market that is fair, that is free from harassment, etc. I want to ask you, with your experience of the bereavement industry, is there not a sense that we are depriving people of experiencing something of the human condition or the human experience in an approach with prepaid services?

I am thinking now that if you were talking about the birth of a child, usually there is a pregnancy before people go out and buy a crib and do all the things related to that birth. With the wedding of a daughter, usually there is a proposal of matrimony. There is an essential experience, an experience in death that one has to live through.

If one is living through that experience with consummate professionals who are in the funeral sector, in the cemetery sector and in the monument building sector, and these are all people who have an ability and a capacity to help people through the grieving process, is it not something that is valuable to the process that an individual would actually go about making these arrangements in a fair and equitable market, admittedly, but dealing with professionals from these sectors in their grieving situation, as opposed to a kind of nicely packaged situation whereby you can have death and not talk about it? Do you understand the drift of the question?

1640

Father Defoe: Yes, I get your question, sir. There are two things there. One is that of course the grieving process is an essential element, but because it is an essential element does not rule out the possibility of making the other arrangements in advance. When there is a death, and you gave the death of a child as an example, that is a terribly emotional period of time. People have to come in and have to do so many things. Apart from handling their own grief, they have to deal with financial things.

On the other basis, if the parents have taken care of the financial deal ahead of time, their children are spared that particular problem. The weather can be wrong. They can come in at a bad time. There is an element of two or three days to make all these arrangements. They do not know where the money is coming from. There are things like this.

I have been a priest for nearly 45 years and for 25 years I have been involved in the day-to-day arrangements at the cemetery. I have seen people

come in where they say, "What do we do?" Then they start to argue, "Shall we spend this much or shall we spend that much?" Someone will say: "Well, it is dad's money. Let us spend it." Someone else will say, "Hey, what are we wasting money for?" There are other emotional considerations there when arrangements have not been made in advance.

This does not take away from the fact that they have to have the opportunity for grieving and the opportunity for adjusting. That is why I personally, for example, am very much opposed to advising people to go the immediate disposition route, because they are not adjusting to the psychological factor.

Mr Farnan: I am not talking about an either/or in the sense of talking about people not having not have the opportunity to have prearrangements. What I am talking about is if there is an overemphasis on prearrangement. Your position very clearly is to have the legislation revised in British Columbia. That gives greater opportunity in that area. The opportunity, I think, that the government is bringing forward is that there is significant consumer protection in the legislation.

Is there not, in your view, and I think you have in fact said that there is, a need to go through the grieving process as long as an individual is not abused by the players in the process, by the funeral director, by the cemeteries, by the monument builders? Indeed, there is within this legislation an effort to provide the costing for a whole range of services, etc, so that people can clearly see what the situation is, so that there is in part a living through of the human experience, and that in itself is not a bad thing as long as people are not taken advantage of.

Father Defoe: That last phrase of yours, I think, is where the problem really is. That is a crucial time in their life. It is an emotional time in their life. That is when the emotion is, not in the pre-need contact. Sometimes, as I have said, people overexpend and spend beyond their means. They want to do what is right, what they think is right. They feel they have to spend more than what they have money for sometimes.

Mr Farnan: I will not take up any more time. Thank you for your answers.

Mr D. R. Cooke: Father, you heard Mr Mansfield's presentation?

Father Defoe: Yes, I did.

Mr D. R. Cooke: He was crying out to us for protection from what he called high-pressure sales pitches, from harassment, from what in his view was his freedom of thought, his freedom of expression. You are indicating to us, as I understand your presentation, that this cry is not sufficient to thwart your demand for freedom of commercial contact. Is that fair?

Father Defoe: I would not say it is not sufficient. What I am trying to do is balance. I heard him make some references to British Columbia. We know what statements were made in British Columbia and here there is a reference to a petition that was signed. Thousands of people signed the petition. They thought they were signing a petition to ban all telephone solicitation.

We have heard this argument that people are getting these phone calls. There were the comments that one of the newspapers in the city of Victoria was

making about how many calls it was getting from complaining people who got letters when there was an illness or something else like this. If what it said was true, how many calls it claimed to have come in, nearly everybody in Victoria would have to be sick at the same time. There has been an exaggeration.

I am not downplaying the fact that if counsellors are in the field, they have to be controlled. Some years ago, there were people in the business as counsellors who should not have got in. Basically, at least in our area—I do not know that much about Ontario—we have cleaned up the act. I have counsellors working for me at the cemetery and if there are complaints that come back to the people who are employed, we get on top of them right away. We do not want people taken advantage of.

If people call in and say, "We think we were oversold," we say, "Fine, get your money back," or whatever adjustments we can make. There is a danger, and I am not saying there is not, but I think the advantages of helping people in advance far outweighs letting it go until the end and then having people taken advantage of at that time.

Mr D. R. Cooke: You say you get on it right away when they complain.

Father Defoe: As soon as they complain.

Mr D. R. Cooke: But the emotional harm is already done.

Father Defoe: But sometimes the complaint is not really a serious complaint. Sometimes they were told, "How much can you put down?" and they were afraid to say, "I can put down only 10 per cent," and the counsellor maybe takes a little bit more and suggests a higher price. That is the type of complaint. It is not a serious complaint.

The evidence is that most people are happy because they have concluded these arrangements. In 25 years, I have had only two cases where people came back and cancelled a contract completely. I have sold many of them myself, because I am involved in the day-to-day operation of our cemetery and have been since I was appointed to start it. I have been involved. I have dealt with the people. I have seen them in all circumstances, pre-need, at need and in every other situation where they are just about at need, and I have had only two where my counsellors had contracts cancelled.

Mr Dietsch: Do you buy them back then?

Father Defoe: Yes, they get their full money back.

Mr D. R. Cooke: Would you care to tell us how you choose your clients?

Father Defoe: We use parish lists. We write a letter and then we follow up with a telephone call. We do a parish at a time. The parish priest sends a letter out. That is why I mentioned the point about religious freedom.

The cemetery does not send the letter out. The parish priest sends it out and says: "We have our Catholic cemetery. The counsellors are going to be in touch with you. They are going to offer to explain to you what it is we have to offer. If you wish to see them, fine. If you don't, just say so." What we do with a parish list, other cemeteries in the area do either with lists

they have received or else they do it out of a reverse directory or by some other means.

Mr D. R. Cooke: Does the parish priest go over those lists and filter out people he feels might be unfairly dealt with, not unfairly dealt with by yourself but who might not take well to the phone calls?

Father Defoe: It has not been a problem, so we have not done it. We have not done it in the past. It has not been a problem, but in discussions and preparation for this paper and so on, I can see the point that maybe there needs to be a little bit—but we have not had the problem.

We had one instance where a lady got called and she had just lost a very young infant. She got called twice. She phoned up after the second call. One person who called her was a woman and the other was a man, so there were two different counsellors. I said, "Let me find out what happened." It happened that she had been registered twice on the parish list, once by one name and once by another name. When I explained it to her, I said, "I'm sorry that we've called you at this particular time, but we had two names for you down here." She said, "Oh, I forgot to tell the priest that I had"—

Mr D. R. Cooke: The priest should have known that she had lost an infant and perhaps would have taken her name off the list altogether.

Father Defoe: From the circumstances she set out, I doubt that he was involved.

Mr D. R. Cooke: Do you have any figures, as a result of pre-need sales, whether people end up spending less or more money on funerals?

Father Defoe: Yes, we do. Those figures are 25 per cent to 40 per cent. Those are figures that I have heard discussed at many a convention that I have been to where people are promoting sales, not necessarily pre-need sales, but where they have given a comparison of what reaction you get to direct mail, what reaction you get to others. From my own experience in dealing with people out there, I know that given the opportunity of coming into the cemetery—if you have a display room set up, which we do not, with a lot of fancy vaults and things like this, people are attracted to it just like when they go into a funeral home. They see these very nice caskets and they say, "That looks so nice." Then they find out what the price is.

Mr D. R. Cooke: I think it was the Guaranteed Funeral Deposits people earlier this afternoon who suggested that the figures went both ways, that there is also evidence the other way around.

Father Defoe: I have never heard any figures. That was a revelation to me.

The Chairman: Mr Defoe, if there are no other questions, we thank you very much for your presentation.

Father Defoe: Thank you for the extra time, sir.

The Chairman: That completes the presentations for the day. We will commence again tomorrow morning at 10 a.m. in this room.

The committee adjourned at 1650.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

TUESDAY 26 SEPTEMBER 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mr Brown

Cunningham, Dianne E. (London North PC) for Mrs Marland

Curling, Alvin (Scarborough North L) for Mr Lipsett

Farnan, Michael (Cambridge NDP) for Mr Wildman

Haggerty, Ray (Niagara South L) for Mr McGuigan

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Chiefs of Ontario:

Bothwell, Nora, Chief, Alderville First Nation

Antone, Paul, Burial Grounds Committee, Oneida First Nation

From the City of Hamilton:

Orzel, Chester, Manager, Hamilton Municipal Cemeteries

From the Ministry of Consumer and Commercial Relations:

Webber, Bernard, Assistant Deputy Minister, Business Practices Division

From the City of Brampton:

Connor, Clay, Deputy City Solicitor

From the Council of Christian Churches of Greater Vancouver:

Turner, Priscilla, President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 26 September 1989

The committee met at 1004 in room 151.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
(continued)

CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order, as we consider Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act. We have a full schedule of presentations today. The first one this morning is from the Chiefs of Ontario, joint Indian association. Chief Nora Bothwell is here, I believe. If she would come to the presenters' table, we could proceed.

We welcome you to the committee and we look forward to your presentation. We have allowed 30 minutes for every presentation, and that can either be the presentation entirely itself, or leaving time for an exchange with members of the committee. You are on, and you can proceed.

CHIEFS OF ONTARIO

Chief Bothwell: Thank you and good morning. First of all, I would like to take this opportunity to give you a brief overview of who we are and the people we represent. We, the first nations, are comprised of 130 first nations communities in Ontario, representing over 104,000 status Indians. The first nations in Ontario consist of a variety of linguistic groups, tribal backgrounds and different political structures.

We speak on behalf of the chiefs of the first nations in Ontario who have given us the mandate to work with the government of Ontario on the new legislation that impacts on the burial grounds of our ancestors. The Chiefs of Ontario office co-ordinates the collective political activities of the four main political organizations in independent first nations.

Prior to European settlement on our lands, the first nations occupied vast territories throughout the Americas. In the region now known as Ontario, many different tribal groups were situated in all of the regions. This is evidenced by the number of villages that have been unearthed as development intensifies. Along with these villages, there are numerous burial sites, and that is why we are here today: to inform you of the importance we place on the protection of the final resting place of our ancestors.

In March 1986, the cemeteries regulations branch of the Ontario Ministry of Consumer and Commercial Relations solicited responses from the general public concerning amendments to the Ontario Cemeteries Act. As part of this process of public consultation, the native community at large responded through various organizations and councils.

In total, there were six responses from the native community, all of which expressed concerns that unmarked native burials were being impacted upon by development, farming, natural erosion and by archaeological excavations both sanctioned and unsanctioned by the provincial government. The responses also suggested changes to the act to address these concerns.

The Honourable William Wrye, then Minister of Consumer and Commercial Relations, released for discussion a draft of the proposed new Cemeteries Act on 1 March of this year. This initial draft included very few of the recommendations made by the native people within the province and in fact created more concerns than it resolved.

In late March of this year, an ad hoc committee composed of representatives from several provincial native organizations and first nations governments began meeting with representatives of the provincial government to redraft those sections of the act dealing with discovery and disposition of unmarked burial sites, and to propose regulations for it. This process has helped to direct the entire group towards a more feasible and adequate piece of legislation that addresses some of the many concerns and recommendations that the native community has.

To help outline and expand upon the problems that we have with the act and suggest means to facilitate the disposition of the burial sites when they are encountered, I would like to introduce Paul Antone, who is a member of the Chiefs of Ontario burial grounds committee and an archaeologist of the Oneida first nation, who will provide a short slide presentation to the committee.

Mr. Antone: I will try to make this as quick as possible. First nations involvement in developing a new Cemeteries Act has its roots in the Grimsby site affair.

The Chairman: We will put the lights down first. The lights are controlled from the control room; we will get them shut down. Thank you.

Mr. Antone: In 1976, the Royal Ontario Museum received word that a large early historic native people's ossuary had been located in Grimsby, Ontario. Upon hearing of the find, several native people from around the province responded by going to the site and requesting that the attending archaeologist stop his excavation. The researcher was warned that he may be charged under the Criminal Code of Canada, and furthermore, that he may be in violation of the Ontario Cemeteries Act.

Seemingly paying no heed to these warnings, the archaeologists continued their work and tensions escalated to the point where several native people initiated a sit-in and temporary occupancy of the Royal Ontario Museum in order to bring their grievances to the public's attention. The situation was finally resolved and saw the introduction of new policies and regulations to be followed where human remains are found.

For nearly a decade, these policies were covered under the auspices of what is now the Ontario Ministry of Culture and Communications. In more recent years, the Ontario Ministry of Consumer and Commercial Relations, which administers the Ontario Cemeteries Act, undertook the jurisdiction of these sites.

As was illustrated by the Grimsby site events, native people are dismayed by how easy it is for individuals to disinter human remains, especially those of their ancestors and relations. The provincial government

agreed and introduced regulations and policies to cover and protect these sites. However, recent examples indicate that these regulations and policies, along with an antiquated Cemeteries Act, do not adequately provide for protection of burial sites and cemeteries.

1010

This proposed new Cemeteries Act, albeit with its own shortcomings, is far superior and meets more of the concerns of the first nations people of this province than any other piece of legislation that has been introduced thus far. If the proposed new act does in fact become law, it will no longer be a long-drawn-out process, nor will it be quite so easy to disinter human remains without first having reached some sort of site disposition agreement with the next of kin of the interred.

The present Cemeteries Act, although designed primarily to deal with modern cemeteries, has struggled the past several years to accommodate unmarked native burial sites as cemeteries. At times, the act has not been interpreted in the same manner for all sites. It appears that the only way to have a site designated a cemetery is if the site has been impacted to the extent that a profile can easily be seen showing human remains. On the other hand, there have been cases where human bone has been disturbed by farming practices, with clear indications that the site contains more than one body, and yet has not been designated a cemetery. Some of these sites have been refused the status of a cemetery on the grounds that there is not enough proof that there is more bone below the surface. Conversely, there are cases where less evidence is provided for burials and the site has been declared a cemetery by the cemeteries regulation branch.

Another major fault of the present act is that it does not seem to accommodate the fact that not all interments are conducted in a Christian style of burial. Some prehistoric burial ceremonies differ extremely from today's standard. Secondary interments, cave or rock cairn burials, bundle burials and disarticulated skeletons, etc, do not seem to fit anywhere under the present act. With the revisions made thus far in the proposed new act, these differing burial practices will be accommodated and afforded the same protections as other cultural burial practices.

As mentioned earlier, prior to the cemeteries regulation branch accepting a mandate for unmarked burial sites and cemeteries, the Ministry of Culture and Communications handled these investigations. By establishing a network of contacts among the various native communities, MCC staff readily informed the nearest first nation governments when a burial site or cemetery of known native origin was located near them. Work would then proceed to either remove the interments to a safe area or provide protection for them.

In this series of slides, we see a single interment that has been accidentally encroached upon by modern farming practices. The land owner, having discovered human remains, followed procedures by contacting the police and the process followed the natural system of steps to the point where it was found to be best that the burial was excavated and a much deeper pit was opened to bury the human remains further below the surface so that the land owner may continue to utilize his property for farming purposes.

Sometimes sites are located by other types of land use. For example, three Euro-Canadian burials were impacted by gravel pit operations. Here we have a burial where the skull of one of the bodies has been dislodged by pit mining. Children playing near the pit found the skull and one of their parents

reported the matter to the police. Upon determining that the site was old, the regional archaeologist was contacted and the site examined. In this instance, the work was conducted by a university professor and some of his students.

When burial sites are located and the topsoil stripped, what archaeologists look for are discolorations in the subsoil. Here you see there is a very clear indication between a light subsoil and a darker mottling caused by the grave shaft being dug and the darker soil being mixed in. The archaeologists cleared a large area around the shape of the grave shaft, took her down, removed the bulk; as you can see, there is one of the skulls. This is a lady who died during childbirth; her child is nestled in her right arm which is pointing down towards the bottom of the screen. You can see at the top of the photograph here, where the gravel pit is actually there, and the skull had fallen off the skeleton. This is her husband, who had died some time later.

In the St Augustine cemetery case, a local individual had filed a complaint with the cemeteries regulation branch that a cemetery existed in a field that was being utilized for agricultural purposes. The Ministry of Culture and Communications paid an archaeologist to investigate the site on behalf of the Ministry of Consumer and Commercial Relations. Following directions from the individual who had concerns regarding the site, who was not available at the time the investigation was conducted, the investigating archaeologist was unable to locate the suspected site. Since there was no written documentation or maps regarding the site, and given the ministry's policy that suspected sites are not cemeteries, the question of why the Ministry of Consumer and Commercial Relations directed that an investigation be conducted has never been answered.

The process for notification and investigation leading through to a site disposition agreement through negotiations or, barring this method, arbitration, is quite simple if all parties follow the procedures. When a site is discovered and determined to be of native origin, the nearest first nation government should be contacted within two days from the time of discovery. Following the process, a site disposition agreement should be negotiated within three months of discovery, and no longer than six months if the matter is referred to arbitration.

Most of the first nation people today agree that some scientific analysis or study of human remains can be of practical use to them. However, this may not be the case for all sites. But in each case, the scientific community will be allowed to state its case and attempt to negotiate a separate agreement for study of the remains. This opens a very important process of communications that has had a meagre existence in the past. No longer will the scientific community have a free hand and demand that it has a right to study and examine all human remains for an extended period of time. Now, they will need to show not only that their work is important to them and the scientific community but also what this type of work has to offer to the very people their work impacts on.

The new act, while addressing many of the above concerns and inconsistencies of the previous act, still has some shortcomings. Several minor concerns such as wording and structure of the act are worth pointing out. It is imperative that unmarked native burial sites and cemeteries, which could also be designated as irregular burial sites, not be designated as such. Although they may appear as irregular burial sites, they most likely are not if the remains are of native origin. It is hoped that the regulations will take into account this concern, as the proposed new act does not allow for this.

Thank you. Chief Bothwell has some further comments.

Chief Bothwell: We would like to commend the ministry for working with first nations in the drafting stages of this new legislation, and express our appreciation for this opportunity to make a presentation to the standing committee. The proposed act in its present form, after second reading, includes many of the recommendations made by the Chiefs of Ontario committee on burial grounds, worked out in a joint process with the ministry officials responsible for drafting the legislation. There are still a number of changes that we feel ought to be made in order for the act to better incorporate the concerns of the first nations and provide much needed protection of our burial grounds.

We recommend the inclusion of a preamble, to consist of the four basic principles as developed by first nations, as follows:

- (a) The sanctity of the deceased is paramount to all other concerns;
- (b) The deceased have a right to rest in peace in the tradition and custom of their religion;
- (c) Common human dignity must be respected; and
- (d) The living must be responsible for the care of the deceased.

We are aware that a preamble is not binding in law. The last two of these principles are included implicitly, but we feel that it is important to state these principles in order to set the tone and intention of the act and to strengthen its overall objectives.

The definition of "lot" should be amended in order to reflect first nations concepts regarding burials, to read: "'Lot' means an area of land in a cemetery containing or set aside to contain human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium, or other forms of interment in accordance with cultural affinities." This will expand the definition to include, for example, rock cairns and cave burials.

First nations object to the use of the term "unapproved" aboriginal peoples cemetery, as it suggests that the cemeteries of aboriginal people had to have provincial approval even prior to Confederation. We recommend using the term "unregistered" aboriginal peoples cemetery. This change applies to sections 71 and 72.

Under clauses 71(2)(b) and (c) reference is made to "one of Canada's aboriginal peoples." We find this wording patronizing and paternalistic, as it implies ownership and denies first nations status as nations, and we suggest "one of the aboriginal peoples of Canada." We do acknowledge and we are aware and very pleased that the ministry has recommended this change also.

1020

Subsection 79(6) should read, "No proceeding under clause(1)(a) or subsection 35(2) or 36(3) or section 69 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the registrar." We feel that the discovery of human remains should be given at least as high a priority as monetary concerns.

There are other concerns:

1. There must be a mechanism in place to provide for the co-ordination of all government ministries and departments to ensure that sites are dealt with expeditiously. Along with the Ministry of Consumer and Commercial Relations and its responsibility for the Cemeteries Act and the Funeral Directors and Establishments Act, there are a number of other ministries and statutes that may become involved when burial sites are discovered. These include the Coroners Act, the Human Tissue Gift Act, the Arbitrations Act, the Ontario Heritage Act, the Environmental Assessment Act and the Planning Act.

As an example, under the Ontario Heritage Act, archaeologists are required to obtain a licence pursuant to that act to carry out archaeological exploration, survey or field work on property that may or may not include sites containing human remains.

2. We have a concern with the proposed changes to section 87, as outlined in the minister's opening remarks to the standing committee. Our concern is in regard to sites that could be designated as heritage sites under the Ontario Heritage Act. We do not want archaeologists to have the freedom to conduct archaeological excavations on human remains in those sites designated as heritage sites without the consent or approval of the first nations concerned as required under the Cemeteries Act.

We recognize that some sites have heritage significance; however, we feel that a licensed archaeologist should not excavate burials or cemeteries without authorization under the Cemeteries Act and only pursuant to a site disposition agreement.

3. Strong incentives, such as tax breaks or cost recovery options, must be provided to ensure that land owners and developers report discoveries. At the present time, it is not in the best interests of the land owners or the developers to report a burial site. Cost is the major consideration.

4. Provisions must be made for policing and enforcement of the new act.

5. Any future amendments to the act or regulations which deal or could deal with burial sites should be made only with prior consultation and consent of the first nations.

The regulations that govern the administration of the proposed act are a critical component to the new legislation as it will affect first nations. Ministry personnel have agreed that first nations will develop the first draft of the regulations governing procedures respecting unmarked aboriginal burial grounds.

This drafting process is now under way. Some of the concerns that we are dealing with in the proposed regulations are:

1. Detailed definition of terms.

2. Provisions for northern concerns. In the past, we have experienced problems when dams are built and areas, including burial sites, are flooded. A mechanism whereby first nations will have assurance that they can continue to be buried with their ancestors must be included in the regulations.

3. The entire arbitration process, including costs, time frames, number and method of selection of arbitrators, equality of representation between the first nation and the land owner, and persons to appear at the hearings.

4. Consultation with an archaeologist/osteologist when conducting an

initial investigation of a burial site, to ensure that a sound judgement is made as to the origins of the remains.

5. Contacting appropriate first nation governments.

6. Full assessment of the site, including delineation of the site boundaries and the cultural affiliation of the remains.

7. Protection of the site/remains.

8. Items to be included in the site disposition agreement, including markers/memorialization, reburial, time frames, protection of the site/remains, interim storage of the remains and artefacts, financial obligations of the parties, location and boundaries of the site/cemetery, maintenance and access to the site/cemetery, safety and responsibilities of the parties.

9. Scientific analysis of the remains. Analysis will only take place with the written consent of the first nation.

The committee will continue its negotiations with the province under the overall guiding principle that full jurisdiction and control over unmarked aboriginal burial grounds properly rests with the first nations. We have one recommendation for change. Our concern is in the section dealing with the Lieutenant Governor's powers to make regulations under subsection 46(1) and more specifically subsections 21 and 30.

Our recommended changes would be to add a new clause as follows:
"46(2)(a) Traditional aboriginal burials are exempt from any regulations made under this act."

Our reasons for this recommendation are in regard to the burial ceremonies that may be conducted in a traditional manner by first nations spiritual leaders. We request that there be no interference with these ceremonies, when it is required that they be conducted away from the first nation community.

These aforementioned recommendations for changes are summarized in appendix A. We request the committee's most serious consideration of our recommendations for changes to these acts. Thank you. Nia-weh. Meegwetch.

The Chairman: Thank you very much for your presentation. I believe Mr Farnan had a question for you.

Mr Farnan: Actually, no, I did have a question, but in your last remark you answered it. I wanted precisely what you had in mind in terms of the changes so that the committee members would have it front of them next week when we went into clause-by-clause. You pre-empted my question. I want to commend you on an outstanding brief. Well done.

Mr Tatham: Just a question of general interest: How many years do you go back as far as a site is concerned? Thousands of years? What is the time frame?

Mr Antone: We have been in Ontario for over 12,000 years.

Mr Tatham: So you would go back that far.

Mr Antone: Yes, sir.

The Chairman: Any other questions or comments from members of the committee? If not, thank you very much for your presentation.

CITY OF HAMILTON

The Chairman: The next presentation is from the city of Hamilton. Chester Orzel is the manager of cemeteries. For members, it is exhibit 13. Mr Orzel, we welcome you to the committee and you can proceed as you wish.

Mr Orzel: The Hamilton Municipal Cemeteries applaud the effort of the various officials of the ministry in bringing about the changes in the legislation which governs our industry. I must say, however, that the act, as it was, was a very good act. The only thing that was required was some house cleaning. I also wish to express my appreciation for being involved in the consultation process which has taken place over the past year.

Over the past 20 years I have taken an active role in working to initiate some of the changes to the act governing the operation of cemeteries. This was done on an individual basis, plus as a member of the legislation committee of the Ontario Association of Cemeteries, always making the views of municipal cemeteries known.

The Hamilton Municipal Cemeteries have been in operation in one form or another for over 100 years. We have 14 cemeteries under our jurisdiction and do approximately 1,300 burials per year. We manage these cemeteries from our office which is located on York Boulevard in Hamilton. The Hamilton Municipal Cemeteries are of the opinion that we are members of a highly respected industry. We observe the highest standards of business ethics, while maintaining the deepest respect for our clients and those who have been placed in our care.

The Hamilton Municipal Cemeteries have been attempting to bring the cemeteries out of the Dark Ages. We are trying to dispel the myths and conceptions about death and dying. All cemeteries today make a conscious effort to offer our grounds as passive parks, in addition to city parks, historical areas and peaceful sanctuaries.

The new act, Bill 31, for the most part will be acceptable, but sections 23 and 24, for example, will be difficult to administer.

The Hamilton Municipal Cemeteries, in their pre-need sales, only sell lots, graves and interments. We do not sell monuments, markers or wreaths. The selling of these articles is done by monument dealers and florists in the business community in Hamilton or the surrounding communities. I should also mention that the policy of the Hamilton Municipal Cemeteries is to refund the original price of lots, graves or prepaid interments, whenever requested, upon receipt of the original document.

1030

We feel that we should continue on with this policy for the following reasons: Cemetery lots when purchased are similar to insurance policies. The cemetery is guaranteeing the owner a specific location and certain rights, depending on the location. If you cancel an insurance policy, you do not receive full value plus interest, so why do you do so in this business? The difference between the original price and the buyback price should be the cemetery's fee for guaranteeing the property.

Sections 23 and 24 allow for the buyback of contracted goods and

services and cancellation of contracts. The proposed act, Bill 31, will allow this arrangement to go on into eternity through the heirs of the purchaser. Sections 23 and 24 are made retroactive. Upon written request, after 30 days, an owner receiving a notice that the contract is cancelled, under this section, shall refund to the purchaser all money, together with all income received under this contract, less a service fee yet to be determined.

This service fee should be at least the accumulated interest or the difference in price. In Hamilton, for example, December to January is when the prices change. The provision of section 24 amounts to full refunding being retroactive. It is safe to say that the financial base of any cemetery would be undermined through these provisions. In the eventuality of cancellation and buyback, how does one prepare? What sort of reserve is required if further revenues are placed in reserve? How do we pay for the administration costs?

In the case of Hamilton Municipal Cemeteries, where we do not solicit business with a sales staff and where a purchaser walks into our office with the intention of pre-need purchase of a lot, grave or interment, after staff spends considerable time showing the property and explaining the details, the purchaser is then granted cancellation and buyback concessions.

The policy of the Hamilton Municipal Cemeteries is to allow the purchaser to put property on hold for 90 days without payment, and by this act he receives another 30 days which is far too long. This section also leads to speculation in cemetery property. If this section goes through, the ramifications to the cemeteries are obvious and tax implications will require a ruling. It is our opinion that we will be faced with an accounting nightmare.

At this time I would like to thank the committee for the opportunity to express my views and hope my input will be of some assistance.

The Chairman: Thank you, Mr Orzel. Mr Wiseman.

Mr Wiseman: I wonder, sir, you mentioned you have about 1300 burials a year. In your experiences to date of ones that were cancelled, how many would you say you have a year at the present time?

Mr Orzel: Well, in the last couple of years we have had—

Mr Wiseman: Is it a big item? Is it 10 per cent, five per cent?

Mr Orzel: In the last two years it has been a big item because of what has happened in the area. We have a Ukrainian-Greek Orthodox community which has established a new cemetery somewhere in the Oakville area. We find that these people have bought pre-need and are now flipping over to the Oakville cemetery.

Mr Wiseman: But in a normal year, like that we could see happening where—

Mr Orzel: You might have one a month, two a month.

Mr Wiseman: I just wondered, as a different kind of businessman, I think that kind of volume on, say, 100 burials a month or better than 100 burials a month is less than one per cent. You mentioned that the bookkeeping and everything would be horrendous. This way, do you give back the full amount at the present time to that one per cent?

Mr Orzel: Yes. We give back exactly, sir, what they have paid for.

Mr Wiseman: Under the new arrangements, as I understand it, you would pay back 50 per cent, so that if your grave was worth \$2,000, you would pay back \$1,000 and you would be able to resell it for \$2,000. Is that not the way it works?

Mr Orzel: I do not—

Mr Wiseman: No? I misunderstood then. I thought you had to pay back only 50 per cent under the new arrangement but I will have to read that more closely. We had someone yesterday as well, and I just felt as a businessperson handling the number that you are handling and the number that we handle in our business, if we can get away with one per cent that come back for a refund or an exchange or whatever, that is keeping it within a reasonable number.

Mr Orzel: Please do not get me wrong. I fully want to give back. We have no qualms about buying back. We have always bought back. I have been there since 1968 and we have always bought back. My predecessors bought back. It is the difference that we have to pay. We bought back at the original price.

Mr Wiseman: You mentioned there that your prices usually go up or are adjusted, if they are going to be adjusted, in January. Do you see it that if this goes through, you would be asked to give back the higher price or just the contract price that you have written up? Say you wrote it up in September and the price changed in January. You would not have to give the new price back, would you?

Mr Orzel: I am not sure exactly how it works, but my interpretation would be 50 per cent of the difference between the old price and the new price.

Mr Wiseman: I will have to get that clarified maybe too by the ministry people if that is true. Maybe we could get that clarified.

The Chairman: I would refer you to subsections 24(3) and (4), Mr Wiseman.

Miss Martel, you had a question.

Miss Martel: I do, Mr Chairman, and I may need the deputy to give us some assistance as well. I have the bill in front of me and there are two questions that I had concerning what was in your brief on page 2 and where they were found within the act, so that I could get some clarification as to whether or not we are all interpreting the same thing.

For example, under the title "Section 23 and 24" you talked about, "Allowing for the buyback of contracted goods and services and cancellation of contracts. The proposed act...will allow this arrangement to go on into eternity through the heirs of the purchaser." I am wondering what you are referring to there.

Mr Orzel: We are in 1989, and if some person bought a lot, and this has happened, in 1912 or 1920 and paid \$100 for this lot, had moved away and was buried somewhere else, now he has a lot in Hamilton Municipal Cemeteries that has not been used. He dies and the heir gets the deed to this lot. Now the heir comes in and says, "I want the refund on this." Mind you, he has to prove that he is legally entitled to this. But there is a case where the lot might now cost \$1200 and the owner paid \$100 for it. What right does this heir have to the difference when we have guaranteed the original owner?

Miss Martel: May I ask ministry staff for clarification? Is he not

going to be paying the \$100 that was the original purchase price? We are not expecting the municipality to pick up what the current value of it is, are we?

Mr Webber: The proposal—

The Chairman: I am sorry, Mr Webber, would you come up to the microphone please so that it can be picked up on Hansard.

Mr Webber: The proposal is that the cemetery would repurchase at 50 per cent of the current value when the request is made to repurchase. The cemetery then obviously has the right to resell the rights to interment at the current market price.

Mr Dietsch: Supplementary, Mr Chairman: Let's use the example that was provided. They bought the plot for \$100 and it is currently worth \$1200. So what you are saying is the cemetery would repurchase the lot for \$600.

Mr Webber: Correct.

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Mr Dietsch: Minus an administration fee, correct?

Mr Webber: I would have to get other expert advice.

Mr Dietsch: That is what I understand in accordance with section 24.

Mr Webber: There is an administration fee that is chargeable. That is correct.

Mr Dietsch: Then the cemetery would be eligible to resell that lot to someone else for the current market value, which would be \$1,200?

Mr Webber: That is correct.

Mr Dietsch: Do you find fault with that?

Mr Orzel: Yes, because we have guaranteed this land and all the rights for that period of time. We find that with all our maintenance costs and over and above what is necessary in perpetual care, we do not receive our money back.

Mr Dietsch: As I understand it, though, there are provisions for an administration fee to offset some of those costs, for example, mowing of the lawn and any of those ongoing maintenance costs that you would have administratively put forward over the period of time, and you would have the opportunity to resell the lot at the current market value which would be \$1,200.

Mr Orzel: Not knowing what the administration costs are at this time—these costs are yet to be determined—we have difficulty with this.

Mr Dietsch: I would assume you have a fairly good idea of what it costs you to maintain your cemetery. For example, if it is a 1,000—plot cemetery and it costs you \$1,000 to cut the grass, then it theoretically costs you \$1 a lot to cut the grass. I imagine that in an accounting process there would be an opportunity for you to allocate those maintenance costs over that period of time and bring those costs forward as administrative costs.

Mr Orzel: That would be fine.

The Chairman: Do you have a further supplementary?

Mrs Stoner: No. I did not get an answer to the situation, and perhaps the deputy could help, where somebody bought a lot two years ago and paid \$2,000 for it. Then the whole family moves to Australia and they know they are not going to need it. What do they get back?

Mr Orzel: They get back their \$2,000.

Mrs Stoner: Where does the 50 per cent come in?

Mr Orzel: Right now, not under the new act but under the old act, if they bought the lot for \$2,000 two years ago and they come into our office, we give them the \$2,000.

Mrs Stoner: What about under the new act?

Mr Orzel: Under the new act, it would be 50 per cent of the difference in the current price.

Mrs Stoner: I do not think that is very fair; \$1,000; is that what you are saying?

Mr Orzel: No.

The Chairman: Mr Webber, I think we need your help again.

Mrs Stoner: The question was directed to him.

Mr Orzel: My interpretation is it is 50 per cent of the difference of \$2,000 and the current price.

Mrs Stoner: Is that correct?

Mr Webber: The situation under the current regulations and under the current policy would be that the cemetery would refund the entire purchase price. However, under the new proposal, the cemetery would be required to pay back only 50 per cent.

Mrs Stoner: Of the total?

Mr Webber: Of the purchase price; sorry, of the current market value, which presumably in a short period of time would be a very similar amount to the original value. The intention here is to prevent speculation, as well, and have some balance in the entire legislation.

Mrs Stoner: You are saying 50 per cent of the difference between what they paid two years and what it is worth today.

Mr Webber: No, 50 per cent of the current market value would be refunded under the new proposal.

Mrs Stoner: Okay. If it only went up \$200, we are now talking about \$2,200. What do they get back?

Mr Webber: It is \$1,100.

Mrs Stoner: And they paid \$2,000.

Mr Webber: Yes.

Mrs Stoner: I do not think that is fair at all.

Mr Webber: No, it would not be fair in the—

Interjection: It is up to the cemetery.

Mr Webber: Exactly, and that is the balance within the proposal.

The Chairman: Say that again, please.

Mr Webber: At the current moment, the cemetery policy in that circumstance is to refund \$2,000, which is what they paid. If the value has gone up to \$2,200 in the interim, the new policy requires the cemetery to refund \$1,100, but I would point out that that would be a legislated requirement whereas now it is simply a policy of the cemetery and varies from cemetery to cemetery. One could perhaps ask of other cemeteries that appear this week what their policy is.

The Chairman: Would you object to only paying back half?

Mr Orzel: That was not the interpretation we were given.

The Chairman: Is speculation rampant in cemetery lots?

Mr Orzel: No, under the old act it is not, but under the new act and under the interpretation we have been given, it would be because we were told that the interpretation was 50 per cent of the difference between the new price and the old price.

Mr Dietsch: Now, with that clarification, how do you feel about it?

Mr Orzel: I feel that is fine.

Mrs Stoner: You will only have to pay 50 bucks back on a 100-buck plot.

The Chairman: That certainly is a difference.

Mrs Stoner: I have a real problem with this.

The Chairman: So we are correct on this.

Mr Webber: The other point I might make is that at the current moment there is no legislated requirement for any repurchase to be done and this is an attempt to bring that right to the consumer.

The Chairman: It makes a repurchase mandatory if requested—

Mr Webber: that is correct.

The Chairman: —and it sets out the price of 50 per cent of the new price.

Mr Webber: Exactly.

The Chairman: Back to Miss Martel, whose original question it was.

Miss Martel: I just want to go back to that and ask Mr Webber, does the ministry have any idea of the current state at most cemeteries in terms of what their present contracts are? Do most of them repurchase? Do most of them not?

Mr Webber: My understanding is that several of the cemetery organizations do refund based on, I believe in some cases, 65 per cent of purchase price, and in others, full purchase price. I believe some of the other witnesses appearing this week will be addressing this point.

Mr Wiseman: Can I ask a supplementary on that?

The Chairman: Mr Wiseman is going into the business. I can see that right now. There was a supplementary from Mr Dietsch, and then Mr Wiseman.

Mr Dietsch: Just to try to get a handle on exactly how in-depth this is, can you tell me the number of repurchases you have done? How many repurchases do you average a year, for example?

Mr Orzel: We came up with a figure of about one per cent.

Mr Dietsch: One per cent are repurchased. You said 1,800.

Mr Orzel: It is 1,300.

Mr Dietsch: So you have repurchased 13 per year.

Mr Orzel: I would say between one and two per cent.

Mr Dietsch: Are these plots that you have repurchased been out in other ownership for long periods of time or short periods of time?

Mr Orzel: It varies. Some we get back where people have moved to Florida and they have had these deeds since, say, 1920. They come back to Hamilton to give back the lots. Some are within the last couple of years.

Mr Wiseman: You mentioned your problem a while ago. Was it a Greek Orthodox cemetery?

Mr Orzel: Yes.

Mr Wiseman: Now, with what you know, if that takes place, that may be a deterrent from them moving from your cemetery to another.

I wondered about perpetual care. What happens to that portion of the money? You buy a burial site and then you pay so much for the upkeep of that.

Mr Orzel: It is 35 per cent.

Mr Wiseman: Is that refundable? You mentioned earlier, before you knew what happened here, that you only had to refund 50 per cent of whatever the cost was today and then you can resell it. I wondered if you were worrying about what Mr Dietsch was saying about \$1 a year for maybe mowing the grass or something. You would have that covered through perpetual care of that grave, would you not? Do you ever sell one that is not with the upkeep portion on it?

Mr Orzel: Yes. The perpetual care went into effect in 1955. There

were a lot of lots that were sold prior to then that did not have perpetual care on them.

Mr Wiseman: Do you sell one without it today?

Mr Orzel: No. Anything that is sold today, the money goes into perpetual care.

Mr Wiseman: Is that refundable?

Mr Orzel: Once the money goes into the perpetual care, that is not refunded. We refund that amount of money that should go into perpetual care out of the general funds. The person who sells the lot gets the total amount from us.

Mr Wiseman: That he or she paid originally.

Mr Orzel: That is right, but the money that went into perpetual care stays there.

Mr Wiseman: It might be something, Mr Chairman, to ask the other presenters, whether they do the same. That seems a quite fair of handling it.

The Chairman: We have a long list of speakers here.

Miss Martel: I hope I do not provoke as much discussion this time.

I have a question a little bit further on in that same section where you talk about your policy in terms of cancellation and buyback. You say the policy of your cemetery group is to allow purchasers to put property on hold for 90 days without payment and by this act purchasers receive another 30 days, which is far too long. I am wondering where in the act you have noted that there is now going to be 120 days before someone is going to have to make a payment. I am not sure where that comes from.

Mr Orzel: That is not in the act. The 30 days is in the act. It has been the policy of the Hamilton Municipal Cemeteries to allow somebody to come out, select a lot and think about it. They have 90 days to come up with the money and to think about it. Now, after they come back into the office and they sign a contract, they still can have 30 days on top of it.

The Chairman: That 90 days is at your discretion.

Mr Orzel: It is our policy.

The Chairman: It is not in the act.

Mr Orzel: That is right.

Mr Farnan: Just a comment: I suppose the first comment is that we are living in an increasingly mobile society. Corporations are appearing like mushrooms and disappearing just as quickly. People are moving across the country to get re-employment. It would appear to me that as people would be selling off lots or selling back lots, equally so, people would be moving into areas for employment and seeking to purchase lots.

That kind of mobility may actually increase the amount of business, if I can put it that way, that the cemeteries would do. In fact, because there is a

profit, at least in the short term, there seems to be room for additional profit to the cemeteries.

One comment I would make is that I found it interesting that the deputy minister suggested that part of the rationale for this particular section was to discourage speculation. I am very pleased to hear that. I would hope that the deputy minister might have a chat with his counterpart in the Ministry of Housing on similar kinds of legislation that would discourage speculation in the housing market, which would be far more important in my view and a problem that needs to be addressed.

The final comment I want to make is that I am just tickled pink at the number of delegations that have come forward and said they are pleased with the consultation process. Obviously, that is something we can commend the ministry for. It is always good to know the ministry is consulting.

I cannot help but think that Mel Swart is out there down in Welland-Thorold. I have here a variety of documents in which the former member for Welland-Thorold absolutely bombarded the government, requesting the kinds of legislation that are before us in this bill, with a couple of significant exceptions, I might add. But Mel must be sitting in his armchair back in Welland right now, perhaps watching these proceedings, and he is probably chuckling to himself and saying, "After pushing so hard, here's the government going out and consulting." It is a credit to Mel. New Democrats are pleased that the government, after many years, has listened to the very positive suggestions that we have been putting forward. There are some problems we see in the bill and the problems basically are those areas in which the government refused to listen to the very insightful and very dedicated former member for Welland-Thorold.

Mr Haggerty: I want to direct a question to the witness this morning. I understand that these cemeteries are run by the municipality of the city of Hamilton.

Mr Orzel: Yes.

Mr Haggerty: Is there any financial obligation of the city council to provide funds to the cemeteries?

Mr Orzel: Yes, they subsidize us.

Mr Haggerty: They do? What amount are you looking at?

Mr Orzel: Close to \$1.2 million.

Mr Haggerty: This is what keeps the cemetery alive, then, you might say.

Mr Orzel: Yes, but in the city of Hamilton we are unfortunate that through annexation we have picked up a lot of abandoned cemeteries from which there is no revenue. We also picked up a cemetery called Stoney Creek Cemetery, if there happens to be a member from our area there. Through annexation, we got this cemetery and they made sure that when we got it that the cemetery was completely sold out. All the moneys that were to be put into the perpetual care went into the general fund, so the city of Hamilton got a cemetery with no revenue, just expenditures.

The Chairman: We have a couple of more people. Is that all?

Mr Haggerty: No, I just wanted bring to the attention of the committee that we are dealing with municipalities here. The largest share of them, I think, support the cost of operating the cemeteries within the municipality boundaries. It is something the committee could be well aware of when looking at cost-sharing, you might say, or providing user fees more so. There may have to be some increases in this area to help sustain the cemeteries within the municipalities.

Mr D. R. Cooke: First of all, in sections 23 and 24 in the discussion we have had, I take it you would be retracting some of your comments there now and you are satisfied with sections 23 and 24?

Mr Orzel: Pretty well, yes.

Mr D. R. Cooke: You could, of course, as a matter of policy reduce that 90-day holding period to, say, 60 days, in view of the fact that there is a 30-day, money-back guarantee. You are suggesting that 120 days is too long?

Mr Orzel: That is right.

Mr D. R. Cooke: I understand, as well, that in circumstances where a cemetery might come into some financial difficulties as a result of buyback obligations, there might be some discretion from the registrar in assisting the cemetery in those circumstances, although I do not know from what you are describing that those circumstances would arise in your case.

The major question I have has to do with the number of graves that sit sold and dormant and whether or not your cemetery company or cemeteries generally make any attempt to remind people or heirs that the plot is there. You talked about a plot perhaps being purchased in 1920 or 1930, and here we are 60 or 70 years later. Is there any attempt, on a regular basis, to track down the owners?

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Mr Orzel: It is very difficult after that many years. Some cemeteries go through their inventory of lots. After a number of years of their not being used, under the act you can go and get a judge's order and have these lots resold. My organization tried that some years ago. After I came, I had a few instances where my predecessors had sold these lots and all of a sudden somebody came and said: "Here's my deed. I have this. I want to bury so-and-so in it," and we said, "Sorry, these lots have been sold."

Mr D. R. Cooke: Had that person not been contacted when you got your judgement?

Mr Orzel: They could not find him, and they had advertised in the newspapers at that time. We showed him all the ads. Mind you, he was quite reasonable and he just picked up and bought another lot, but these are the things. After a while, I felt it was no use going through this and having this aggravation.

Mr D. R. Cooke: I was involved in a circumstance last month where we approached a cemetery in this city, basically because a family plot existed in the cemetery. The reasoning was, "We will not be able to use that family plot because there is only room for Aunt Gertie, but we'll try to get another plot nearby." In the course of discussing this with the cemetery personnel, they pulled the deed to the plot and we discovered there were five plots purchased

in the family plot. Nothing had been touched since 1957. Nobody in the family was aware that there were five plots there, and yet quite easily, the cemetery could have gone ahead and sold another lot to the family. With time passing, in the process of decades without anybody paying much attention, surely that is fairly common.

Mr Orzel: When somebody comes into the office, we make it a policy to talk to the person, to ask him if he has anybody buried in it and pull out all our records and show our records to the gentleman or the lady and ask, "Is there a possibility somebody could be buried in what you have?"

The Chairman: I am sorry we are out of time, but we thank you very much. You have obviously triggered a very interesting exchange with members of the committee and we appreciate that.

The next presentation is from the city of Brampton. Is Clay Connor here? These are exhibits 3 and 3a. They look like this. Mr Connor, welcome to the committee. The next half hour is yours.

CITY OF BRAMPTON

Mr Connor: First off, on behalf of the city of Brampton, I thank you for affording me the opportunity to bring you a municipal perspective on Bill 31.

As you probably know, municipalities are affected by the Cemeteries Act in a number of ways. In the city of Brampton we operate our own municipal cemetery. We also maintain a number of abandoned cemeteries when the owners either cannot be found or are unable to maintain them. In addition, some of our public works road and bridge projects occasionally require the acquisition of cemetery lands, so we are involved in the closure or partial closure of cemeteries as well.

The suggestions I will be making here today will, I believe, make life easier for municipalities in dealing with the responsibilities and the legislation without adversely affecting the public interest that the legislation is clearly designed to protect. Our areas of concern are as follows:

First is the definition of "municipality" in section 1. The definition of "municipality" includes both a regional municipality and a city. This creates a problem for us as it is unclear whether the city of Brampton or the regional municipality of Peel is to exercise responsibilities under the act. At present, it is the city of Brampton that exercises responsibility for cemeteries. I believe that regional municipalities do have planning and health concerns relating to the establishment or expansion of cemeteries. Therefore, I would suggest amending the definition of "municipality" to provide that a regional municipality is included only for the purposes of sections 3 to 7, inclusive. They are the sections where municipal consent is required for establishing or laying out a cemetery.

The second area of concern relates to the municipal approval provisions under sections 4, 5 and 6 of the bill. The difficulties we see with these sections are as follows:

First, we think the public hearing process should be made mandatory

rather than optional. Whether the other municipalities would agree with us or not, I do not know, but for Brampton we are prepared to have it as a mandatory hearing. We cannot imagine doing more than one or two a year, so we do not think it would be too onerous to have a hearing. The hearing should be held by council or a committee or council, and I think it should be provided that it can be combined with a public meeting under section 34 of the Planning Act if a rezoning is required for the cemetery.

If the hearing process is to be meaningful, we feel there should be a requirement for public notice of the hearing, not just public notice of the decision. We feel the municipality should be able to recover from the applicant its costs in advertising the notices of hearing and decision.

We feel the municipality should be able to attach conditions to its approval. It may be similar to conditions you would impose on a site plan agreement or what have you.

We feel that in subsection 5(1) the "reasonable time" to give or refuse approval should be defined. For example, it could be established at 90 days, and if a municipality has not made the decision within the 90 days, it would be deemed to have refused the approval request so the applicant could then exercise its remedies and referral rights.

Subsection 6(1) should state explicitly that the board, on an appeal, may confirm the decision appealed from as well as reverse it. Now all it says is that it may reverse it and substitute a decision of its own.

The third area of concern is with the cemetery closure provisions. We agree with subsection 8(3) requiring public notice in advance of the cemetery closure rather than just in advance of any disinterment. We do have a number of concerns with the process, however. Some of our concerns may be addressed by the regulations when they are put in place. We do not know.

Our first concern has to do with section 8. We feel section 8 should specify who can request the registrar to order that the cemetery be closed.

We feel "interested persons" should be defined, either in the act or in the regulations.

We believe a time limit should be placed on the notice and submission process so as to not unnecessarily delay a public works project that requires a cemetery closure.

We think the applicant for the closure should be given the right to see and respond to any submissions made to the registrar with a view to try to resolve these concerns. Practically, that will probably happen anyway but we think the right should be specifically provided in the legislation.

Finally, we feel that the right to appeal the registrar's order under section 10 should be restricted only to those interested persons who have made submissions to the registrar and the applicant. This would prevent persons from being able to unnecessarily delay a project by waiting until the last minute to appeal a registrar's decision without having had the opportunity of having his concerns addressed through the submissions process to the registrar.

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The reason this is a concern—it is not part of the written material before you—is that we had a project that arose out of a coroner's inquest in Brampton to build a grade separation on Centre Street in Brampton right by Peel Memorial Hospital, because from the southern part of the city the only access to the hospital was across these railway tracks. We had the hospital at one side of the road, a cemetery at the other, plus we were dealing with the railway authorities.

I do not know what your experience has been with railway authorities, but you tend to do things their way when they want you to do them. That was what we found. To get the money out of the federal government to actually help us build this thing, we had to—we were on a very tight timetable and it sort of came at the last minute. We discovered in doing the survey on the cemetery lands we were acquiring that there was one grave. I have to publicly commend the people at the branch. They helped us immensely to keep on our schedule. We were concerned that if a situation like that arose in the future, it could jeopardize a very substantial project, so we think the time limits should be set out. If we know what they are, we can schedule around them.

Our fourth area of concern has to do with the licensing requirements under the legislation. I am not sure how this is going to work. It may not be a concern in practice but we believe that municipalities as owners of several cemeteries, many of them abandoned, should be exempt from the licensing requirement or at least from the paying of the licence fees. If this cannot be done, then municipalities should only be required to obtain one licence and pay one fee, regardless of however many number of cemeteries they may operate.

The fifth area has to do with disinterments. This is what I see to be the major flaw in the legislation as drafted. It relates specifically to section 51. Subsection 51(1) provides that no person shall disinter any human remains without the prior consent of the interment rights holder and without notifying the proper medical officer of health.

Subsection 51(2) of the bill goes on to provide that subsection 51(1) does not apply to a disinterment order by a court, a coroner, the Attorney General or the Solicitor General.

It is imperative in our view to amend subsection 51(2) to provide that the consent of the interment rights holder is not required where the disinterment is ordered by the registrar acting under subsection 9(1) of the act.

We feel that if an interment rights holder, as an interested person, objects to the closure and goes through that appeal process under sections 9 and 10, only to have the registrar's order upheld by the tribunal, that person could still hold up a project by refusing to give consent under subsection 51(1) to a properly ordered disinterment by the registrar. We feel an applicant for a closure and disinterment order should not be required to bring a court application to enforce a registrar's order because an interment rights holder may still not be happy and still refuse to give consent.

The sixth area of concern has to do with neglected cemeteries in section 59. We feel that in its present form this section is not adequate for a number of reasons, both from the municipality's and an owner's point of view.

First, it does not give an owner any right of appeal from an order that a municipal inspector might make. An appeal process similar to the one for a property standards order under section 31 of the Planning Act could be provided. Most urban municipalities have property standards committees and they deal with those types of appeals. I think that process could work here as well.

The second concern with this section is that no powers of entry are provided anywhere for municipal inspectors to enter on to the neglected cemetery to inspect and make an order.

Third, no assistance is provided to help municipalities collect the costs they may have incurred by repairing a neglected cemetery. For example, we think that subsection 16(1) of the legislation could be amended to give the registrar the power to revoke or refuse to renew an owner's licence if the owner has outstanding amounts owing to a municipality under section 59. We feel that if an owner allows the cemetery to fall into disrepair to the degree that the municipality has to step in and fix it, then maybe that owner does not deserve to continue to have the licence to operate that cemetery.

The seventh area of concern is abandoned cemeteries. As presently worded, section 60 allows an owner of a cemetery to apply to a judge of the district court to declare a cemetery to be abandoned, but the owner is not required to give notice of the application to the municipality. This seems unfair to us since once the application is made, the municipality must maintain the cemetery and pick up all the costs of the application.

In addition, it is unlikely that the municipality will be made exempt from any provision of the act under subsection 60(7) if it has no notice of the application in the first place and is not there to argue that it is entitled to exemption from certain sections.

We feel the following changes are necessary. First, amend subsection 60(3) to require the owner of the cemetery and the registrar to give the municipality notice of an application. Second, amend subsection 60(4) to make the municipality liable for the cost of an application, including the cost of a survey, only if the application is successful or if the municipality was the applicant in the first place. Third, amend subsection 60(6) to make it clear that when the declaration is registered in the land registry office, the municipality becomes the owner of the land upon which the cemetery is situated, not just the owner of the cemetery.

That may be a bit of an esoteric point, but we have a problem in Brampton where there is an abandoned cemetery under a 999-year lease on land owned by a corporation. The corporation is financially capable of maintaining the cemetery, but it is saying: "We own the land. You own the cemetery. You look after it, but by the way, one day we may come along and want to close it." They certainly want to use the land in terms of their total area requirements and how much they can build on their property. It seems to me they want to have it both ways.

Our eighth area of concern deals with trust funds, and this is a concern of our treasury department. They are concerned that the provisions of section 35 require the setting up of a separate fund, ie, a separate bank account for each cemetery we have. This seems unnecessary in the municipal context, since the interest in the care and maintenance fund for each cemetery is insufficient to cover maintenance costs for them. Our treasury people think it

would be sufficient if the regulations permitted the keeping of one account, so long as the money attributable to each cemetery is accurately recorded.

Our last area of concern has to do with the purchase and sale of cemeteries. Subsection 81(2) of the bill empowers municipalities to pass bylaws offering the purchase of a cemetery or a part thereof, but there is no provision equivalent to section 67 of the present act, which empowers an owner to sell a cemetery or part thereof to a municipality. We think this omission should be rectified and the present section 67 should be brought forward. I suppose the argument is always open that if the power was there before to sell and it is not there in the new bill, then the Legislature intended to take it away. I do not think that ever was the intent.

The power to sell the cemetery and restrictions on that power are not dealt with in the bill. We feel that if it is intended that the registrar be given the power to approve all ownership changes before they are effective, it should be included in the act itself, rather than in a regulation. I know presently there is a provision in the regulations where the ministry approves ownership changes. In practice, a lot of people are not aware of that. I think if it were in the act instead of a regulation, even lawyers dealing with it would be more apt to find it.

In conclusion, I would just like to thank you for your time and attention. If you feel any of these suggestions are worthy of referring to the staff for further study or if I can clarify anything I have said today, I would be pleased to talk to the staff and I would be pleased to answer any of your questions.

The Chairman: Thank you, Mr Connor, for a very specific and disciplined brief. We appreciate it. Mr Tatham has a question.

Mr Tatham: It is a question about abandoned cemeteries, and this is probably of a general nature. We had a situation in our municipality where children were playing and a stone fell over and a child died because of that. Do you have problems like that in your area, old cemeteries where the stones are not being taken care of properly? Is this a situation that has to be looked at?

Mr Connor: It is a concern, not with one in particular that we operate, but there is one in rural Brampton that the trustees still operate and they do have problems. In fact, they have come to the municipality seeking some sort of grant from us to help them fix up the cemetery. We are still at the stage now of negotiating: "Well, we don't know if we can give you the money. If you want to take the position that you can no longer afford to maintain the cemetery, then we'll take it over and look after it. But we don't know if we can just give you money to do it." It is not a widespread concern, but we do have one or two instances where that is a problem.

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Mr D. R. Cooke: I just want to clarify what it is you find wrong with section 60. I understand the present situation is that the cemetery, when it is abandoned, is deemed to be the responsibility of the municipality. Is that the present situation?

Mr Connor: Yes.

Mr D. R. Cooke: What we are trying to do there is to formally go through a court process to have a hearing, and the results of that hearing likely would be to give ownership to the municipality. So in that sense it is an improvement.

Mr Connor: Yes.

Mr D. R. Cooke: But you are concerned there is no notice provision so that you can have participation in the court process. Is that your concern?

Mr Connor: That is certainly a large part of our concern. The other part of our concern is that you might run into a situation where you have an owner who is capable of maintaining a cemetery but just cannot be bothered making the application. If we are not there to be part of the process, we may have the responsibility thrust upon us when we really do not deserve it.

Mr D. R. Cooke: You are happy with the thrust of what we are doing; you simply want to—

Mr Connor: We want to be a part of it.

Mr D. R. Cooke: —to have some formal notice provision. I would think in some cases, at least—but I could not guarantee it would always happen—the judge would require notice be given to municipalities, but you want it to be in the legislation.

Mr Connor: Yes.

The Chairman: Are there any other questions from members of the committee? Mr Connor, thank you very much for your presentation.

The last presentation of the morning is from the Council of Christian Churches of Greater Vancouver. Is Priscilla Turner here? Would you please take a seat at the table? Mrs Turner is from British Columbia; welcome to the committee. The committee members are all looking for an invitation to come out and visit you.

Mrs Turner: They are? I wonder at whose expense they will be doing it.

The Chairman: That is a very good question. This is exhibit 14, which is being distributed now.

Mrs Turner: I have here two bound copies of the complete thing, including extensive appendices. For anybody who is interested, I also have more or less a collector's item, the Gosse report of the 1970s, and of course your legislation and our legislation for reference. I do trust that I am audible. Am I audible?

The Chairman: Yes, you are audible.

Mrs Turner: Good, because the material I have to deliver, even delivered at a rate of knots, will take me 20 minutes, I am afraid. My excuse is that we wanted to give you real value for money; in the second place, as an academic, I am accustomed to the short paper format in which there is 20 minutes yap and 10 minutes questions.

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Mrs Turner: The death industry and investment in it is at least as old as Egypt or China. So is investment in gold or grain, and, because of inflation and famine, speculation in gold and grain futures. However, while death is a sure thing, the kind of thing to which smart money has always been attracted, it has still been left to our own post-Christian culture to arrive at systematic investment in death futures. It is a pretty irony that according to Christian orthodoxy there will be a last generation whose pre-need payments will be money wasted.

I have, after 23 years in this country not yet come to terms with telephone solicitation of any kind. I regard it as a pain in the behind. Because local calls are free, anyone may cash in on my time, energy and telephone rental to wake me or the baby, interrupt my prayers, my mealtime, my domestic argument, my marital relations and so forth with intrusive questions and suggestions. It is wholly counterproductive in my case, and if the ban on it were extended to all goods and services that would, in my view, constitute an advance.

However effective, telephone solicitation is peculiarly offensive when it comes to death. Muriel Spark's Memento Mori, with its epigraph, "The Four Last Things to be ever remembered are Death, Judgement, Hell and Heaven," and its mordant wit about the telephone message, "Remember you must die," is not so funny here. Nobody wants to be reminded of mortality. Perhaps this, paradoxically, is why telephone solicitation works. It says, "Think about this now and you will never have to think of it again." In short, telephone solicitation in this context is a textbook case of the need to bridle capitalism, which sometimes works well only for the capitalist, in the name of civilized ethics and in the public interest.

The detailed material which follows, with its supplementary documentation, has been assembled by Clarence Morin of the council's research committee.

On 28 June 1989, British Columbia's new cemetery and funeral legislation received royal assent. While the new legislation is a major milestone and the result of more than 14 years of petitions, presentations, proposed legislation and hard work by all concerned, it is far from perfect.

As you probably know, it replaces provisions previously contained in five separate pieces of legislation. The new legislation is designed to correct the inadequacies of these. To a degree, it succeeds. For example, it forbids telephone and door-to-door solicitations, and that is something. It forbids by implication unauthorized multiple cremations. It puts in law provisions to prevent recurrence of past abuses when nothing could be done because no law existed.

However, it does nothing, as far as we are concerned, to stop the development of monopolistic control of the death industry in BC communities. It falls short when it comes to calling for a more rigorous training of funeral directors, specialized health protection and recognition of cultural and religious considerations in the disposal of the dead. It allows up to 20 per cent retention of funds paid into a pre-need plan when such a plan is cancelled. We should have liked to see 100 per cent plus interest returned to purchasers. But this is a matter to be determined by regulation, and we hope to have significant input into the development of all of the act's regulations.

British Columbia became a gold mine for death industry conglomerates seeking market control, because one organization can own the cemetery, crematorium, funeral home, monument factory, flower shop, insurance companies and everything else that relates to care of the dead. In BC, the dramatic expansion of conglomerates and vertical integration of their services are a major concern.

In the city of Vancouver, for example, if you wish to be cremated you have no alternative but to go facilities owned by one or another of the conglomerates. Vancouver city-owned cemetery space is sold out, and the only choice, if you do not belong to an organization or association that operates its own cemetery, is to buy a plot from Service Corporation International or the Loewen Group Inc.

The conglomerates are buying out, driving out and taking over more and more of the individual funeral homes. Effective competition provided by independent operators is disappearing. BY having control of the crematorium and cemetery facilities, the conglomerates have a competitive advantage that we believe can only lead to the elimination of the independent funeral home and the exploitation of the consumer. There is no legislated control over such development.

Before the 1960s, funeral service in the greater Vancouver area was provided by individual entrepreneurs or incorporated companies owned by families. The names of many of these pioneer funeral directors are reflected in corporate names in use today; a list follows. In the 1960s, three developments took place that significantly affected the funeral service profession.

First, many consumers were exploited by promoters of a pre-need funeral plan known as Pineview Memorial Gardens (BC) Ltd. This resulted in what was known as the Funeral Plan Act being enacted in haste in 1962. It remained in force until replaced by the 1989 legislation. Second, the Memorial Society of British Columbia became active and, third, the first conglomerates began operating in BC.

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In 1975, there were 37 funeral homes in the lower mainland. Of the 37, 19 were located in West Vancouver, North Vancouver, Vancouver, Burnaby and New Westminster. The 19 included three owned by Service Corporation International, three by Gordon Armstrong, two by E. Harberd, two by Ray Loewen and two by the Atchison family. All the rest were owned by individuals. In 1985, 10 years later, in the same area there were 15 funeral homes. Of the 15, only eight were family-owned and -operated. All the rest were owned and operated by conglomerates.

In 1989, the picture changed dramatically again. SCI bought the operations of First Memorial Services Ltd, which holds the contract to be the exclusive undertaker to the Memorial Society of British Columbia.

There are three conglomerates operating in British Columbia. The first is Loewen Group Inc of Burnaby, the second is Arbor Capital Resources of Toronto and the third is Service Corporation International of Houston, Texas. Appendix 1 shows the ownership of the various funeral homes and funeral planning facilities in British Columbia.

Because it is difficult to learn just who owns what, the listing must not be accepted as definitive. It is as accurate as we can make it, considering that the council has no budget for such research and the owners of funeral homes and cemeteries are sometimes reluctant to list their holdings and acquisitions. Note the listings for Arbor, Loewen and SCI.

The Memorial Society of British Columbia came into being in 1956 as an attempt to overcome abuses and excesses of the funeral industry. Its development was fought by the British Columbia Funeral Service Association. In 1966, its members established a special budget "to raise the necessary funds needed to combat effectively this memorial society movement." The funeral industry lost the battle before it ever started.

It did not help the undertakers when they decided to refuse to handle any disposals, memorial services and funerals for the society. That action motivated the society's president to organize First Memorial Services Ltd as a privately owned company. First Memorial entered into a contract to provide disposals at an extremely low price. That contract has kept the cost of disposing of the dead and funerals in British Columbia lower than anywhere else in North America. First Memorial's primary activity was a "basic service:" immediate cremation and disposal of the ashes with no rituals, ceremony or funeral.

Endorsed by government, trade unions and consumer advocates, abhorred by many Christians and irreverently referred to as "shake and bake," basic service made British Columbia the cremation capital of North America. It also created problems for many bereaved by eliminating opportunity for grief recovery. It provided no formal facility for family and friends to gather together and express their respect for the dead and their condolences to the bereaved. It provided no ritual to say goodbye to the deceased and it denied the bereaved the opportunity to share their grief in a structured or organized way. But it was cheap. It also made First Memorial Services into the largest independent funeral home in the province and its owners very, very wealthy.

In the drive to keep up with the volume, shortcuts were taken. Charges of mass cremations were made public. The charges were denied, investigated and, after much ado, nothing much changed. It did serve as an object lesson to crematorium operators.

As a result of the battle between the BCFSA and First Memorial Services, combined with the Pineview disaster and other abuses, including the allegations of multiple cremations, the NDP government in 1975 appointed Richard Gosse "to conduct a study on the provision of funeral and cemetery services in British Columbia, and any related matters, and to make recommendations." Mr Gosse did his work, but he took too long. The Social Credit government returned to power before the report was produced. When it did appear, little happened until the early 1980s.

In 1982, Arbor Capital Inc bought Cedar Valley Memorial Gardens in Nanaimo, and a year later its sales program made headlines. In 1984, Arbor bought the funeral homes of Ron Young in Richmond and Surrey. The same year, Ray Loewen engaged Nowell Hinch and his company, Estate-Gard of Canada Ltd, to come to BC from Alberta and sell "prearranged and at-need services" for Loewen's Vancouver crematorium, at arm's length, of course. In January 1985, Arbor opened a funeral home to be operated in conjunction with its cemetery in Surrey, and the battle for market control and pre-need sales shifted from high gear to overdrive.

By the spring of 1985, representatives of consumer, religious and other organizations had had enough of the battle for sales and market control in the death industry. They joined forces to press the government for action. Motivated by pressure from their membership, they saw clearly that something had to be done. From every area of the province there was outcry, not just over telephone and door-to-door solicitations. Many complaints seemed to indicate contravention of the Funeral Plan Act.

Complaints were legion. Wrong bodies were taken by undertakers. Some were cremated or embalmed without authorization. People dying of cancer were phoned by zealous funeral plan salesmen. One young man suffering from muscular dystrophy was telephoned and advised by a funeral and cemetery plot salesman that he would be wise to make his funeral and cemetery arrangements right away.

A young housewife complained of being visited by a door-to-door salesman selling cemetery plots and pre-need funerals, an absolute contravention of existing legislation. Bereaved complained that when they were required to go to the offices of one of the conglomerates owning both cemetery and funeral homes to arrange for the purchase of a burial plot, they were advised to switch from an independent funeral home to that of the conglomerate so everything could be arranged at once.

Reports were received that to be buried in a conglomerate's cemetery required that the funeral service be conducted by the conglomerate's funeral home, as a matter of policy. Bereaved were phoned by salesmen within hours of the death of a loved one. Hospital lists of terminally ill patients were alleged to have been obtained by funeral directors. People were asked to pay extra for burial plots purchased 25 years earlier.

Welfare families were told by funeral and cemetery sales personnel that they could have their payments for a funeral and cemetery plot refunded by the welfare department, which is not the case. Morgue attendants reported bodies being stacked "like cordwood" in the back of a truck for transportation from hospital morgues to the funeral home. Royal Canadian Legion members were told they could recover the expense of a funeral and cemetery plot from the Last Post Fund, which is not the case. One very elderly lady was sold two pre-need funeral plans. She bought the second plan while enmeshed in a cross-selling network. Grave sites in the Vancouver city-owned cemetery were resold by the Loewen group for three times the fixed price.

When complaints were investigated, the answers were almost always the same: It was all a misunderstanding; the problem has been corrected; the salesman has been fired for overstepping company rules; or, "We will look into it and make sure it never happens again." In many cases, where cash had changed hands, refunds were obtained. Often refunds were granted without hesitation—and the willingness to grant such refunds made some people wonder just what exactly was going on.

The demands of the church and consumer groups that such problems be corrected are shown in appendix 20.

From 1985 to 1989 our society hung in there. As our work became known, other groups joined us. Even so, there were times when it seemed as if everything was being delayed in the hope we would get tired and go away. The Loewen Group sent a representative to offer guidance and assistance. He was more than miffed when told that the Loewen Group was part of the problem. Representatives of the British Columbia Funeral Service Association and the BC

Cemetery Association assured us there was no need for all the fuss: They would clear up any problems any consumer had.

Meetings were held with government officials and industry officials, and all the while the problems and complaints continued. By 1986 there were 400 people in BC selling funerals to the public and the Minister of Consumer and Corporate Affairs promised that, "If the industry can't clean up its act, I'll clean it up for it."

The industry obviously did some housecleaning: The number of complaints did decline. However, industry promises of self-control certainly seem hollow in light of the complaints. To clean up an act is one thing; to abandon a goal of market control is another. Indications are that one of the favourite sales pitches was to denigrate the independent funeral home operators by insinuating that unless a funeral is prepaid, the bereaved will be ripped off by unscrupulous undertakers waiting to capitalize on the emotionally torn victims. This same line is often reiterated by consumer advocates and journalists. Just stop and think: How could such a funeral home survive for two and three generations of the same family, handling funerals for several generations in other families? It does not make sense. In the greater Vancouver area, the family-owned funeral home operators are respected members of the community. It is for this reason that conglomerates like to retain the family name whenever an independent funeral home is purchased.

Another interesting pattern of the pre-need sales program is cost. It seems that the pre-need cost is often higher than the current at-need cost. It makes you wonder just who the ripoff artists are.

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In 1988 the Minister of Consumer and Corporate Affairs appointed a task force on cemetery and funeral legislation. Besides representatives in the funeral association and the cemetery association, our consumer group was asked to participate. The main task was to find a compromise between the diverse aims of the various interest groups and to help develop the proposed legislation.

Finally, this year we received a new act. We are pleased with the work of our representatives on the task force. The task force was an excellent approach to resolving the many problems and areas of concern. We like the idea that under the act an advisory council will be appointed to "advise the minister and the registrar respecting any matter coming under this act."

In addition, the advisory council may publish bulletins for distribution to the public and perform and exercise any further advisory powers and duties prescribed in the act. Our new legislation went through a dozen drafts or more before being presented to the Legislature. At last, it gives those who pay for the care of the dead an opportunity to have a small voice in matters concerning the care of the dead.

Unfortunately, in British Columbia patterns of vertically, completely integrated operation of conglomerates were well established before the new act was passed. We do not need to wait to see the impact of vertical integration on consumers. The patterns are already there, and industry spokesmen make no bones about prices going up. Ray Loewen, president of the Loewen group, told Maclean's magazine "customers tend to pay about 15 per cent more for a package funeral after the Loewen group acquire a funeral home."

RBC Dominion Securities publication of 20 April 1989 outlined the Loewen group approach as including buying family-owned funeral homes, retaining the original names and integrating operations by buying cemeteries and crematoria. It held out the prospect that: "estimated earnings per share of \$0.80 fully diluted are expected to increase to an estimated \$1.19 in 1990. A superior growth trend in a noncyclical business justifies a higher than market multiple." That sounds like a price increase for consumers.

While you may ban door-to-door sales and telephone solicitations for funerals and cemetery plots, what about insurance to cover the cost of the funeral and cemetery plot? The acquisition and development of life insurance companies by the conglomerates do not look good for the consumer either. It seems to many of us that it would be very easy to make the call soliciting life insurance, and once that was taken care of, just carry on with the funeral and cemetery sales. We have reason to believe that pattern already exists in BC. Death industry expansion into the insurance business has us concerned. I urge you to give it special consideration.

This is the basic picture of things in BC as we see it. While the trends may be excellent for corporations, especially from a profit point of view and earnings per share, they presage little or nothing for the consumer. If the pattern of things in BC is any guide, vertically integrated operations should be forbidden and existing ones should be broken up.

I have reviewed Bill 30 and Bill 31 and compared them to the BC legislation. I am pleased to see the provision that there be a board composed of funeral directors and lay people, telephone and door-to-door solicitation be prohibited and that ownership of cemetery and funeral homes and so forth by a single firm not be allowed. It is a bold step to take in protecting consumers and it is one that must be commended.

Controlling the market and hiking prices is not new. In the late 1880s, mercantile combines with international connections operated in central Canada. Undertakers, "notorious for their frauds," were among them. Have we come very far in the last 100 years?

In conclusion, I recommend that:

1. Every possible effort be made to ensure that fair competition remains in the funeral and cemetery industries. Keep them separate. Protect the independent funeral homes and make it easy for them to establish their own crematoria. With today's technology, there is no reason why any funeral home should not have its own crematorium. This would increase competition and hopefully reduce costs.
2. Every possible effort be made to facilitate development of cemetery property by cities, municipalities, nonprofit associations and religious groups for those who do not wish to be buried by conglomerates.
3. Vertical integration in the death industry be rigorously controlled and special attention be given to death-industry-related insurance companies.
4. Rigorous standards of training of persons entering the funeral profession be developed. This should include salespersons and funeral planners.
5. Complaints concerning the death industry be directed to an independent body.

6. Complaints by telephone should be accepted and any policy that complaints must be in writing should be banned.

7. Rigid health standards should be implemented for those handling the dead.

8. Efforts should be made that cultural and religious considerations are protected.

The Chairman: Thank you for a very interesting brief. I am glad the assistant deputy minister, Mr Webber, is here. You have thrown out a real challenge to him at the end of your first paragraph, where you say, "It is a pretty irony that according to Christian orthodoxy there will be a last generation whose pre-need payments will be money wasted." I look forward to that amendment from the ministry, Mr Webber.

Mr D. R. Cooke: I think this is one of the most powerful presentations I have ever heard. We have heard about the storefront funeral operations in British Columbia, and we have heard journalists, I suppose, tell us often that we waste money on bereavement, that it is not the modern thing to do. I think it is extremely valuable that you have come here and explained some of the horrible things that have happened in that province. This underlines the need for legislation to prevent it from happening here.

Yesterday we had a presentation from Father Nunzio Defoe from the Cemetery and Crematorium Association of British Columbia which was quite different from yours. He was not happy with the new British Columbia legislation. He talked about freedom of commercial expression or something of that nature. He also spoke of ethnic groups and priests who request his services to contact people to buy cemetery plots and to focus their minds on these issues ahead of time. Are you aware of him? Do you have any response to that?

Mrs Turner: Yes, he figures in a couple of the appendices. There are two copies of the complete thing floating around, a large amount of newspaper material and so forth. I imagine that he was not, basically, less unhappy than we are.

We think your legislation is much tighter in several significant respects. May I just give you an example? It is quite unclear to me why, if full repayment of pre-need payments is feasible and mandatory in the case of nonfulfilment of a contract, that cannot be applied to repayment of a plot. You do that. We are proposing to let them keep 20 per cent. Why? If they can afford it when they do not do their thing, why can they afford it when a person decides to get out of it?

Mr D. R. Cooke: Yes, especially if the elderly ladies bought two plots, as you pointed out.

Mrs Turner: Yes. That required, among other things, newspaper pressure. Our newspapers have, on the whole, not been in favour of the cheapie as against the human funeral. It is always a matter of balance. I do not know whether your situation here in Ontario means that perhaps the independent funeral homes have the upper hand. The boot might have been on the other foot in BC, for the sake of argument: It might have been the independents that grew and bought out everybody else and, being on top of the heap, were in a position to control the market. Obviously, it is not good for the consumer, treated simply as a consumer, when this is the case. Thinking of the consumer,

however, as a human being and a religious being, there are many other considerations, and I am sure I would agree with Father Defoe on that.

Mr D. R. Cooke: The conglomerates are certainly moving in rapidly. I do not know whether they have moved in as fast as they have in British Columbia, but in my city, two out of three funeral parlours are conglomerate-owned.

Mrs Turner: I think at least one of them worked in Ontario, with its huge population as a base.

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Another little point: I do not know whether this has emerged in any of your hearings, but we have very good reason to suppose, although I think we were careful about putting this in writing for legal reasons, that before the latest provision that there be trust funds for pre-need payments, all such moneys were going into real estate speculation. There are very large sums involved, even with our small population.

Mr D. R. Cooke: One very quick question. Do you have any information on the relative costs of prepaid funerals as opposed to post-death arrangements? We have heard arguments on both sides. Some say it costs more if you prepay and some say the opposite.

Mrs Turner: I think it varies a little bit, but where the people have a strong hold on the market, they are charging more.

Mr D. R. Cooke: For prepaid?

Mrs Turner: Yes.

Mr Curling: You surely have put a human side to it. Although there is a pretension all the time that a funeral arrangement is so human, we know it is so business. You really put the human side to it.

I would just ask one specific question, or for your comment, on 3 in your final summary, with regard to the insurance business. There are other ways, I am sure, that they can come to it, as you said, by opening the door for insurance first and then talking about death. There are companies that specifically concentrate on term insurance, which is really death insurance, in a way. Do you see any evidence at all that there are companies that do sell term insurance that are very closely linked with the death industry people?

Mrs Turner: Quite frankly, I do not know, but I can see how it could happen. However tightly you draw up your law, what is to stop somebody who has phoned about one matter tipping somebody off to phone about another so that there is apparently no connection? These things happen informally, after all.

I well recall, when I had my first child born here in Ontario and was very new in the country, getting my first commercial telephone call. An insurance company had a spy in the McMaster personnel services office who reported that there were now three persons in the Turner family, not two, and I was phoned by an oily salesman who wanted to sell me more love for my husband and education for the infant. The official connection was perhaps nil. We all know there is no law which can cut out sin, but you can tie things up as tightly as possible.

The Chairman: We have tried.

Miss Martel: I want to say it is refreshing to have your comments as someone from British Columbia, because I was quite appalled by yesterday's presentation at the end of the day, I have to admit.

Let me just make two points, and then I have a specific question for you. In your second last page, you say you have reviewed our bills 30 and 31 and are pleased to note some of things, and you say in particular that ownership of a cemetery and funeral home and so forth by a single firm will not be allowed.

My interpretation of the legislation, and I stand to be corrected by ministry officials at the back of the room, is that in fact the funeral home cannot be beside a cemetery, it cannot be attached to the cemetery, but there is no law that does not allow Arbor, for example, to own funeral homes all over Ontario and cemeteries as well, providing that the two are not on the same site. That is my interpretation. There is not a distinction or any area in this legislation that does not allow a company like Arbor or a conglomerate in British Columbia to own both. They can own both.

Mrs Turner: Yes. In a sense, you have two bills. There is, so to speak, a loophole between them, is there not? There obviously has to be a practical link, in many circumstances. It is no good having bodies rotting while the undertaker has nowhere to—

Miss Martel: I think the problem we are trying to get at, at least from our side, is that we are concerned about tied selling because it is going on. We are concerned that we are seeing a concentration in this market much as you have witnessed in British Columbia. There is nothing in the legislation that provides for the separation of all three sectors, that is, monuments, funeral homes and cemeteries, so that if you are a funeral director you can only be in the business of funeral services; you cannot also be in the business of owning cemeteries. There is nothing in the legislation that prevents the type of problem that you have seen happening in British Columbia.

Yesterday, when I asked the minister when he was in here why this government did not take the next logical step and divide all three sectors into three separate entities and not allow for cross-ownership, etc, he gave two reasons why the government would not do that. He said, in terms of monuments, there was no good reason for monument owners to have a monopoly on sales. The second reason, which was given by one of the ministry staff, was that the responsibility for corporate concentration was the responsibility of the federal government, not Ontario, and if there was increased concentration in this market, then the feds would have to step in and do something about it.

I am wondering how successful the federal government has been in undermining the concentration that has been going on in British Columbia, because by the sounds of it, it has not done anything and it is up to the province to do something about it.

Mrs Turner: I think fairly manifestly not. As long as funerals and cemeteries remain mainly provincial responsibilities, the federal government has got enough else to think about, has it not? I think it is a recommendation of ours that you do see to it. I do not know how far advanced the problem is in your province. We suggest something which is in a sense a contradiction, and that is that the independent funeral home should be allowed to have an integrated operation.

I am not sure about that. I was given this brief to read. One could see abuses there, except that there are so few of them now and so small. Unless they do integrate, they cannot begin to compete because the "shake and bake" process is so much cheaper.

Mr Dietsch: That is rather crass, is it not?

Mrs Turner: It is, isn't it? I am sorry. You either have to laugh or cry about death. You cry if it is personal; you laugh a little bit when it is not.

Miss Martel: I think the point is well taken for all of us. There is definitely a problem with concentration. I think we have to look further at it in this committee. Thank you, though, for a very excellent brief.

Mr Wiseman: I enjoyed your brief and agreed with some of the recommendations you gave us for food for thought. There is one there that I do not think any of us, in the jobs we are in, would accept: recommendation 6, that complaints could be accepted by phone but not in writing.

Mrs Turner: That is not exactly the point. The point was that formerly complaints had to be in writing.

Mr Wiseman: "And any policy that complaints must be in writing be banned."

Mrs Turner: This does not say that there may be no complaints in writing; far from it. If you look at the reference, you will find, in appendix 33, for instance, people are simply too upset to telephone, they do not do it in time and in the past complaints have not been heard because of the requirement that they be in writing. Why should someone who is extremely upset because he has just—this is double jeopardy. You are down financially and your feelings are wounded to the quick when you say goodbye to a loved one.

Mr Wiseman: My experience sometimes when people are upset and they make complaints is they maybe go a little too far. But when I ask them to put it in writing because I am going to investigate that complaint, I have been held out on a limb and the limb sawed off when I said what they told me on the phone was gospel, only to find out that they withdrew from that when they were more rational. I felt like a fool.

Now I will not touch anything like that unless it is in writing so that I am not made to look like a number one fool when I get to the meeting and say, "This is what so-and-so complained about," and then have him say, "I didn't say that" when in fact he really did.

If anyone is making a complaint against a business or an individual, if it is the truth, and I think you would be the first to admit that, then you would want to have it in writing. They may be upset, but perhaps they should wait a day or two until they are not upset to write the letter.

1200

Mrs Turner: We are talking in this context not so much of a formal complaint to the Legislature that he look into it, but to the people concerned, to the funeral home.

Mr Wiseman: I do not want to get into an argument on this, but if

you are referring some complaint to the funeral board discipline committee because a certain undertaker or a certain burial ground did not follow the procedure, then I think that is a serious complaint. It is the person's livelihood and it should be in writing. That person who is writing it should stand behind whatever they put in there and then the person's lawyer, or whoever is going to fight the case, if it gets that far, knows that this is really what the person thought happened.

I will not go into that any more, but the other one was in the health part. I agree with that.

Mrs Turner: Could I just reply on the complaint for the moment? Nobody is going to lose his livelihood under your regulations because of a frivolous or unsoundly based complaint.

Obviously, there is such a thing, as with political prisoners, so with consumers. There is consumer hysteria, is there not, and there are always interests advanced. But when you come to an 85-year-old widow, with perhaps not all her faculties and extremely distraught and disoriented, who has never managed alone before and she has been done over her husband's funeral, this is the kind of situation we had in mind, where justice was simply not done.

I am sorry. Could you repeat your second question?

Mr Wiseman: No. I had another one. Even that person has someone like yourself, a minister or someone like that, who can help them put together a letter. But I will not go into that any further. That is what I found over 17 or 18 years of being a member, that I will not investigate one unless it is in writing, if it is an allegation against a certain firm.

The other was to do with health. I have some concerns here with health in hospitals and everything like I said yesterday; they have certain things they have to do with certain parts or certain areas that must be put in a holding tank and destroyed in a different way and not go into, say, the public dump or into the sewers. I am thinking now of certain diseases.

Mrs Turner: Hepatitis B and the like.

Mr Wiseman: I wondered what they did in British Columbia and if there is a ruling that everyone in BC must be embalmed unless religious beliefs are different. As one group of funeral directors asked us yesterday, if they are handling bodies from another jurisdiction, they should be embalmed before they come here, to get rid of any possibility of communicable diseases being transferred to a funeral director's establishment where they do not know the state of health of the person who died.

Mrs Turner: Certainly, there are restrictions on who may not be embalmed, depending on what they have died of. What we are particularly concerned about at the moment is that the law, which deals with very serious killer diseases that are well known, has nothing to say, for instance, about AIDS. A funeral director can get a body for embalming—embalming is normally not necessary at all.

I have talked quite a while about very different funeral practices of my own culture, Britain, where I, for instance, at age 51, have never seen a corpse, because we do not have embalming and we do not have open viewing. It is not part of it. We have a dead body there in church, well covered up, and only my father, who was a pastor and saw many people die, saw a lot of

corpses. The whole embalming technique, I must say, fills me with horror and the desire to make the deceased look lifelike with even more horror.

But the funeral director may nowadays get somebody for embalming—and you may know that we have per capita the worst AIDS incidence in Vancouver of any Canadian city—but the cause of death is stated to be, say, typically, pneumonia. That is the approximate cause of death. He is draining this body of fluids.

Mr Wiseman: Are you telling us then that Vancouver did not do anything towards introducing anything different from what the old act said as far as health restrictions are concerned in the new bill?

Mrs Turner: It is for Victoria to talk about the embalming. At the moment, because AIDS is an emotive subject, if we could just forget the sexual aspect, it would be less emotive. It is a disease which is highly communicable in certain ways and, as far as we know, always fatal. As such, we think that somewhere, perhaps federally, there ought to be provision made for, for instance, the morgue attendant and the embalmer to know precisely what this individual actually died of. That is the kind of thing we have in mind.

The Chairman: Perhaps we will give the final comment or question to Mr Farnan.

Mr Farnan: Mine will be a request for information, but I want to thank you again for your splendid brief. I think what it says to me is that we do have an opportunity in Ontario to address the problem before it is too late.

Second, I think you are probably telling us, "If you are going to close the door, don't close it over halfway," that it is important to do this job right the first time. Otherwise, I think we may live to regret it.

I see two things here. One is the area of separation, and I would like, if you will correct me—as a principle, I think you are saying "Where you can separate, separate" and that will involve greater protection for the consumer. I think you point out that there are going to be ways in which those who desire corporate concentrations can move around obstacles that are placed in their path vis-à-vis the insurance aspect of this issue. Again, we must look carefully at that.

The request I want to make is that I want to ask our researcher to review the speed of corporate concentration as it is taking place within Ontario. Your brief very clearly defined the very rapid concentration that took place within British Columbia. The document we received on the first day of hearings from the ministry presentation, the overview which included the slide presentation, drew attention to the concentration that was taking place here.

I am concerned that the figures in this document do not reflect the up-to-date situation as it exists in Ontario. I think the same thing applies in Ontario as in British Columbia, where family names are being maintained in funeral homes, etc, and there is the reluctance of the forces of corporate concentration to reveal their hand because it is not in their interest at this stage to be explicit or to put their cards on the table in terms of the degree of corporate concentration.

I would like our researcher to pursue rigorously a very clear picture of what the situation is in Ontario right now. I think it is more than 16

establishments, for example, in terms of funeral homes. We see the names of the same players: Arbor Capital Resources, Loewen Group and Service Corporation International, etc, and in terms of market share. I think we can get some degree of the rapidity with which this concentration is taking place by looking at the short term over, say, the last 12 or 18 months.

Mrs Turner: I might say one more thing. If our experience is any guide, expect them to obfuscate and expect them to squawk when you try to regulate them. One of our pieces of documentation here on page 79 in the long thing, when at the very last moment the minister reversed himself on the phone solicitation matter, there is a glorious piece of illogic here where a spokesman for the cemetery industry said that everybody was now going to have to pay more because there would be less business. How will there be less business? Only in the short term. The amount of business in the long term remains constant. But they will use any method.

The Chairman: Alison will work on that and get that material. I am sure it will Monday before it is available, when the clause-by-clause starts.

Mrs Turner, thank you very much for your presentation. We are pleased that you were able to come here from British Columbia. You have been most helpful in your presentation.

Mr D. R. Cooke: I just want to make a very public point of order. Granted that you have thanked Mrs Turner, but from all of us we really appreciate the time and effort you have taken to bring some of these concerns to our attention. I think it is very appropriate, especially when you have come to a different jurisdiction and gone out of your way, obviously.

Mr Farnan: I think the best way to thank Mrs Turner is if we listen to her suggestions about separation.

The committee recessed at 1212.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

TUESDAY 26 SEPTEMBER 1989

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

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Lipsett, Ron (Grey L)

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Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mr Brown

Cunningham, Dianne E. (London North PC) for Mrs Marland

Curling, Alvin (Scarborough North L) for Mr Lipsett

Farnan, Michael (Cambridge NDP) for Mr Wildman

Haggerty, Ray (Niagara South L) for Mr McGuigan

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Toronto Hebrew Memorial Park:

Schneider, Benjamin, Secretary

Miller, Robert G., Legal Counsel; with Goodman and Goodman

From the Particular Covenanted Baptist Church in Canada:

McColl, J. Stewart, Pastor and Board Chairman

From the Ministry of Consumer and Commercial Relations:

Tappenden, Eric C., Director, Business Regulation Branch

Individual Presentations:

Mueller, Heinz, President, Wholesale Lettering and Carving Ltd

Best, Allan G., General Manager, St John's Cemetery

Currie, James L., Funeral Director, James L. Currie Funeral Home

From the Consumers' Association of Canada (Ontario):

Smyth, Peggy, Immediate Past President

Beck, Barbara, Past President; Board of Funeral Services

From the Loewen Group Inc:

Loewen, Raymond L., Chairman and Chief Executive Officer

Hyndman, Peter S., Director and Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 26 September 1989

The committee resumed at 1406 in committee room 1.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order, as we have a full afternoon slate ahead of us. The first presentation of the afternoon is from the Toronto Hebrew Memorial Park, from Benjamin Schneider, who is the secretary. One of you gentlemen is Mr Schneider. Welcome to the committee. We have divided all the presentations up into 30 minutes each, so you can take as much of that 30 minutes making the presentation as you want or part of it and leave time for an exchange with members of the committee. The next 30 minutes are yours.

TORONTO HEBREW MEMORIAL PARK

Mr Schneider: I am Benjamin Schneider. I am secretary of the Toronto Hebrew Memorial Park. My colleague here is a solicitor representing Goodman and Goodman, the solicitor firm for the corporation.

We are a nonprofit corporation without share capital. We operate the cemetery on behalf of the Toronto Jewish Congress, which is the owner. The Toronto Jewish Congress, for your information, is the major fund-raising, community and social planning arm of the Jewish community. The original intent in the organization of the cemetery was, first, to provide a service. Second, we were very much interested in maintaining a minimum price for plots in the community. In organizing the cemetery, the whole structure was designed for that purpose.

In addition to that, we have created an instrument which is available to all organizations in the community as well as to those people who are unaffiliated. As a result of that, we have 39 synagogues, benefit societies, mutual aid societies and landsmanshaften. A landsmanshaften, by the way, is an association of people who come from the same town or city, from Eastern Europe primarily. These organizations have a section allocated to them so they can designate those members of their organization or synagogue who may be buried in that section. The unaffiliated members of the community may arrange for burial rights in what we call a community section. This is to take care of about half of the community which is not affiliated with any organization.

I must point out that the charges for burial rights in the organizational section and in the community section are exactly alike. There is no difference in the payments. The arrangements are exactly alike; that is, we will make available plots to organizations and to individuals. They pay for the plots and have no managerial responsibilities at all. That is taken care of exclusively by the Toronto Hebrew Memorial Park.

We have a number of concerns. I should mention that as a result of attending yesterday morning's session we eliminated at least one concern that we had, so that this morning we spent some time revising the brief that had originally been prepared.

1410

The three items that we are concerned with are as follows: First are the trust fund provisions. Under care and maintenance, we of course have no objection to providing for a care and maintenance trust fund, but in our discussions with the staff of the regulations department, there was indication that the amount of money to be set aside in the future might be at 50 per cent of the cost of a plot. This means that we would, of necessity, have to raise the price per plot because we are a developing cemetery. We have been putting in extensive renovations in the cemetery, surveys, land development, roads. As a matter of fact, at this point we are looking towards purchasing additional land because we know that what we have available is not going to service our community.

I should mention that originally when we went into this project, back in 1972, the Jewish population in Toronto was 90,000 persons. Today, based upon the statistics that we are aware of and that we could put together, we estimate that it is 150,000, so what we thought were going to be plots available for a 50- to 75-year period will be available for a much lesser period at this point.

If we have to pay 50 per cent of the sale price of a plot into a care and maintenance fund, then our prices have to go up. At this point, I have to mention that in the Jewish community at least—and I do not know what the prices are in the general community—the Toronto Hebrew Memorial Park plots are the cheapest. This is by design and this is the way we want to maintain it. As I indicated, it is the same price to organizations as well as to individuals in the community. More and more we are becoming the last resort of available cemetery plots in the Jewish community and that is why what we are doing has become a very important thing.

The second part of our concern is the tombstone deposit to the care and maintenance fund. It is our understanding, from the legislation and from our discussions with the people and the staff in the regulations department, that not only will there be an imposition of a levy of possibly 15 per cent on the purchase of a tombstone, but that this amount is to go into the care and maintenance fund and that it would be the responsibility of a cemetery to collect this 15 per cent levy on the purchase of a tombstone.

First, if there is an increase in the care and maintenance fund, we submit that this should be sufficient to take care of the supervision and other necessities that attribute themselves to the tombstone care.

Second, if we have to collect that tariff, it presents an onerous job for us because (1) we have no way of knowing what the cost of a tombstone is and (2) we might tend to lose control of the collection of that fee. We think that the proper place for levying that tax would be with the tombstone sales office or tombstone manufacturer and for it to remit to us at such time as they install the tombstone in the cemetery.

The third part that we are concerned with is the refund provisions of the legislation. I should tell you now that basically we have no quarrel with the basic concept of the refund because our policy is, regardless of whether

it is 30 days or three years or five years, if anyone says to us he wants a refund he gets the full cost of the original purchase price of a plot. There is no question about that.

You should understand too that when we allocate or sell a plot to an individual or family, they only pay 30 per cent down on the entire cost and then we give them five years to pay off the balance without charging interest. So it would be eminently unfair for us to get into any kind of a situation where if someone asks for a refund, we might have to get into a position of refunding his money plus the accumulated interest on the moneys that we had been holding.

The other part is that we do not know what the intent of the regulations will be and we have no way of determining what the fair market value of the cost of a plot would be. If the fair market value is the amount that was paid originally to us, we have no quarrel because it is within the sphere of our operation to pay that back anyway. If it is what we are now charging after a number of years, and we have been increasing our price from time to time based upon our increased maintenance costs, then we are into another ballpark and we think that is unfair.

These are really the three things we are concerned with and we submit to you that you give consideration to these factors.

Mr Miller: If I might clarify the concern with section 23, which is the repurchase of the interment rights, as Mr Schneider explained, Toronto Hebrew Memorial Park will allocate a number of plots to an organization within the Jewish community. That allocation is for a price and then that organization has control over who gets to use those interment rights.

The agreement also states they cannot charge more for permission to inter than they paid for the plot. So from our position, the market value of that plot would never change because you could never sell an interment right for anything more than you paid for it. If a purchaser were to buy a lot or a plot in 1970 and ask for a refund in 1989, the holder of the interment right, the person who will have to buy it back, would not be able to charge any more for that plot in 1989 than he or she paid for it in 1970.

However, different allocations are made every year so it depends on how the market value of a lot is going to be determined. Will it be the market value of the actual lot which is the subject of the refund or will it be the market value or the allocation price of a lot in the year of the refund? That is the concern because if the consumer is entitled to the price of the new allocation in that year, it can be much more than the cemetery will be able to in turn resell that specific plot for. Therefore, they will have a loss.

We are unaware of how the regulation will read. The thought is that the repurchase price will be 50 per cent of the market value of a plot, but will it be the market value of a plot that is allocated in the year of the repurchase or the specific plot being repurchased? There is that problem for the Toronto Hebrew Memorial Park. That is one of their concerns because they can lose on those transactions. If the market price of a plot drastically increases, then they will have to pay more than they can actually charge for it again. That is one of the concerns they have.

Mr Wiseman: I do not know whether you gentlemen were here this morning, but we had a discussion on that. A chap from Hamilton was in and he did not realize that you have to pay whatever the market value of that plot is

today, as the deputy said. But you would have already established that as you moved your prices up. If it went up to \$1,000 from \$525 or \$550, you would pay \$500 to that person but you would gain selling it again. You would only pay \$500 back to the person, but you would sell it for \$1,000. That is what we were told this morning about how it worked. I could not see too much wrong with that because you are buying a \$1,000 lot for \$500 and then reselling it.

1420

Mr Miller: That is true. That is true if the actual market price of the specific plot is allowed to increase. However, if a plot is allocated in 1970, it is allocated to an organization within the Jewish community that can then permit someone to inter the remains there, but it cannot charge more than it paid for the allocation. They could never, even if they repurchased the interment right from the individual, sell that plot again for more than they paid for it in 1970 under the terms of their agreement.

In effect, a plot that is allocated in 1989 could cost \$1,000, but this particular plot can never be sold for more than the 1970 price, and that is where the loss will come in. If market value will be the 1989 allocation price, then this plot will be a loss for them.

Mr Wiseman: Is that your private agreement that says it cannot be sold for more than the 1970 price?

Mr Schneider: Absolutely.

Mr Miller: The allocation date; I am picking 1970 because it is far enough back that the price will have risen significantly since then. The plots are allocated to specific organizations in the community, and those organizations are allowed to then designate who can be interred in individual plots. They charge a fee for that, which equals the fee they paid for the allocation in the year that they were allocated the plots. So, the market value of the plots in that specific allocation, the price for which they can be sold, is set, I submit, on the day they are allocated.

Each organization may have taken an allocation in 1970, another one in 1980 and another one in 1989, but if the plot that is being repurchased by consumer A is one of the 1970 plots, does he get the 50 per cent of that price, which would be the market price of that plot, as opposed to 50 per cent of the market value of a plot that would be allocated in the year he is repurchasing?

Mr Wiseman: You are a little different from the ones who were in this morning. You are kind of selling them to other groups.

Mr Schneider: That is right.

Mr Wiseman: Then what those other groups do with it, you have no control over.

Mr Schneider: They are regulated. No, we have. We regulate that and the way in which we regulate it is part of our letter of agreement with an organization. We spell out for them that they may not sell burial rights in their allocation for more than they paid us. We are very rigid about that. We have had instances where we have required organizations to pay back to their members an amount in excess of what they paid us. Now it has become standard practice and accepted all the way through the organization.

Mr Wiseman: Are there other Jewish-owned burial grounds that are run like this or is this unique with your own?

Mr Schneider: It is unique for us.

Mr Wiseman: You may have to change that from now on. I was just wondering if this was customary or the rule that it is done this way.

Mr Schneider: No. The origin of this is that we wanted to prevent speculation in the community with plots at our cemetery. The way we control that is by specifying two things: first, that an organization that takes an allocation cannot charge its members more than it paid us; second, in the community section, no individual can transfer a plot to someone else. If he wants to withdraw from ownership of that plot, then he has to return it to us. In this way, we control everything. We control the price right through the whole place.

I might mention that this was a concern back in 1972 when we discussed this with the cemeteries division of the ministry. They had a real concern at that time about speculation that was going on in the buying and selling of plots. This was the way in which we could exercise control, and it has been very effective.

Mr Wiseman: Did you make this presentation to the ministry prior to the legislation coming in, the problem that it would cause you?

Mr Schneider: Let me say it two ways. First, there was a review of our operations within the last year by the department because we enlarged our cemetery. We opened up a phase 2. Our bylaws and our letters of agreement were completely reviewed. As a matter of fact, we made some adjustments to satisfy the requests of the department. Second, we did have a discussion—it must be about six or eight weeks ago—with the staff of the regulations department and we made these submissions to them.

Mr D. R. Cooke: If I understand what we are doing here with section 23, section 23 does not talk about market value, but rather that is your understanding of what the regulation will say.

Mr Miller: Yes.

Mr D. R. Cooke: Just following up on what Mr Wiseman has said, what you really want is a definition of "market value" that pertains to your situation and your market value in your cemetery.

Mr Miller: Actually, if the regulation is simply to define "market value" as the market value of the lot being repurchased, everybody would be all right because in the cemeteries where the market value of each plot increases every year the consumer would be protected, and in our situation where the market value of a plot never increases from the date of its initial allocation to an organization, again, we would be all right.

Mr D. R. Cooke: Your feeling at the moment is that you are not convinced the ministry really intends to so define it.

Mr Miller: We are not sure. We wanted to make these concerns known. We are not sure what the effect on us will be and we wanted to bring it to your attention, because a regulation that was drafted without this situation in mind could be interpreted to say that the market value of a plot will be

the market value of a plot bought in that year. That could be any plot in the cemetery.

Mr D. R. Cooke: Okay. I think the message is received. My other question has to do with your dealing with section 38. You are basically saying that you think it would be administratively easier if that money collected by the tombstone seller were to reflect, in part, the price of the tomb. Oh, yes, 15 per cent.

Mr Miller: That is right.

Mr D. R. Cooke: In other words, you would have to get a receipt from somebody.

Mr Schneider: We would get the actual money that he collects as the levy on the tombstone. We can control that very readily because we have certain controls today on the erection of tombstones in the cemetery.

Mr D. R. Cooke: Sure.

Mr Miller: For us to begin to say to a person who purchased a tombstone for \$1,500 and came to us to erect this tombstone and we said, "Now you have to pay us 15 per cent of that \$1,500," would become a very difficult and could be an embarrassing kind of situation. But if a tombstone salesman says, "It costs \$1,500, but by legislation you have to pay an additional 15 per cent," it becomes relatively simple for him to collect that. That is all we are saying.

Mr D. R. Cooke: That is like asking the province to write all retail purchasers and ask them to send in their 8 per cent, which would be much more difficult than having the store collect it.

Mr Schneider: That is right.

Mr D. R. Cooke: Have you raised that with ministry officials?

Mr Schneider: Yes, we did, and we are bringing that to your attention as well.

Mr D. R. Cooke: Yes, I see.

The Chairman: There are no other questions or comments. Mr Schneider and Mr Miller, thank you very much.

The next presentation is from the Particular Covenanted Baptist Church in Canada. We have a number of people here, if you will all take your places at the table. This is exhibit 16 which has just been handed out. We welcome you to the committee. Perhaps whoever wishes to would introduce the people with him. We would appreciate it and we can proceed.

1430

THE PARTICULAR COVENANTED BAPTIST CHURCH IN CANADA

Mr McColl: I will do it just in order of succession. On my immediate right is Marion Ruston from London, who is the clerk of our church and also a member of the cemetery board of trustees. On her right is John Thompson from Blenheim, who is a very faithful adherent of the church and is interested in

this because it has been the church of his family for generations. On my left is my wife, Mrs McColl, who is the treasurer of our board of trustees and does the correspondence, and I am Stewart McColl.

May we proceed then, Mr Chairman and honourable members?

The Chairman: Yes.

Mr McColl: If you would turn to the short brief on the Summary of Presentation, that might help. I do not intend to read all of this but to point out the highlights and leave as much time as we can for an interchange of questions and answers.

We too are unique in the province. The title of our church is the Particular Covenanted Baptist Church in Canada, and although we are Baptists, we are different from all of the other Baptists. We are the only church of our faith and order, not only in the province but also in Canada. We have fellowship with the true Old School or Primitive Baptists throughout the United States, and to relate us to Great Britain, we have fellowship with the Strict Baptists or the Particular Baptists of England. We just mention that so that it will give you a kind of orientation.

Under part D, in the background, there are a few observations to help again to orient you to us as a body. As I mentioned, we are the only church. We were established in 1818 by Scottish forefathers who came directly from the old country, and also some Irish settlers, in the township of Aldborough, which is now of course in Elgin county but was then in Middlesex.

Elder Dugald Campbell—we use the word "elder" rather than "reverend." We reserve "reverend," as it is in the Psalms, only for God. I need to acquaint you with a little of that language because we do not call our buildings churches, we call them meeting houses. We consider the church as the body of members, and I am sure you will appreciate that.

When Elder Dugald Campbell tramped through southwestern Ontario from one place to another, there were four or five areas in which organizations were established, religious bodies, but the membership was always kept as one, and wisely so, I think, in our case because we are unique and different and he did not want to have divisions in the membership. Over the years and until this day, we have had four principal meeting houses, one in Kent county in the little village or hamlet of Duart in Orford township; one in Elgin county near Dutton, or closer to Wallacetown, in Dunwich township; and two in Middlesex county, one in Ekfrid township where we live and one a little bit north of London in Lobo township at Poplar Hill.

I have not noted that on here, but it in other of the literature.

Beside one of the meeting houses, our forefathers established a cemetery. It is one half-acre in size and it is beside the meeting house in Ekfrid township, just west of London. They purchased that little plot of ground for £25 way back in the last century, which was quite a sum. You could buy a whole 100 acres for £40 at that time. In the deed, it was for the sole use and purpose of the Covenanted Baptist Church and their people.

I skip on now to part E. Over the years, through the work of our forefathers, we have established our own perpetual care funds, and that started as early as the 1880s. They called it a subscription list. Later on, they got a little more sophisticated and called it a maintenance fund; by

that, I mean maybe 50 cents or a dollar a family that they put into a fund to look after building and repairing the fences and cutting the lawns.

In later years, in the 1920s—this was early for this concept—they formally established it as a perpetual care fund. Immediately they did that, they began getting bequests from wills, love tokens, etc, but it was always done on a voluntary basis. That has continued to the present. We now have, as I mention here, \$9,300 in the fund, which is all invested in guaranteed certificates. We treat it as perpetual. It goes and it is locked in and we do not use it. Along with that, we have some \$400 of the old three per cent government bonds that were sold and are still in existence.

Mr Haggerty: Still hanging on to it.

Mr McColl: We are still hanging on to it, until 1996. Hopefully, we can get rid of it then and get those moneys so they bring us a better return. We have a couple of accounts for operating and we keep a little reserve there in case of an emergency.

We have been pretty well left alone as far as government inspection has been concerned, but on 2 June we had a visit from the government inspector from London. He went over all our books and the audits of our finances and our registry of deaths and death certificates, information certificates and so on, and everything was in order. But in a letter that followed, he said that we had now to take \$35 per grave retroactively to 1955 and turn that over to either the public trustee or one of the approved companies under the Loan and Trust Corporations Act. This was kind of a shock to us. Perhaps I might go on and then we can come back to some of these things.

Therefore, from that time on, we have sought through the ministry an exemption, not from having perpetual care funds—we are in complete agreement with that—but that we might simply continue to invest them on our own so that we can get the highest rate of interest possible in the marketplace. After 161 years of successful operation, we feel we have a right to appeal for that provision.

The inspector—I did not know this, but it was through a letter we had returned from the ministry—said our cemetery was impeccable. That is his language, not mine. We feel we have kept it up. There is a lot of local interest. We have had a lot of volunteer labour and our people have been very conscientious.

In item H, we present two precedents for that, one in section 27 of the blue act or the act of 1980. As I am sure you are well familiar, in regulation 91, subsection 9(1), there is a provision for religious organizations that operate, maintain and own three or more cemeteries shall be exempt from that statute and can invest their own funds. We feel that as that stands and if it is carried on into the new act under a regulation, it is discriminatory in relationship to our church and to churches somewhat in general.

I hope I can make that point clear. It is not just the difference between operating one cemetery or two and three, but when a regulation like that is administered, it says to the large—if I might use the term—corporate churches where they exist under the aegis or name of a central authority such as the Presbyterian Church in Canada or the United Church or Lutheran or Anglican or Roman Catholic—obviously, they are going to have three cemeteries or more. But when we come to Baptists, Congregationalists and Methodists, etc,

where each church is autonomous and self-governing, obviously, on the other hand, they are not going to have more than one cemetery.

I discussed this with department officials and also with others. It takes a little while to see. On the surface it looks all right, but in application it does distinguish some churches from others.

Second, in subsections 24(1) and (2) of the blue act, where it states that perpetual care funds shall be set up and the owner of a cemetery devote so much to that perpetual care, there are exemptions that have been given unto the old act for that and they are listed in the back at page 50. Subsections 23(1) and (2) list the Mennonite cemeteries, or many of them, for example, that have been exempted from subsections (24)(1) and (2); in other words, not only that they should have the freedom of operating on their own, but not necessarily do they have any perpetual care funds.

I just point out these two parts. As a result, we are left somewhere in between. That relates to the new act, because if these provisions are not changed we feel there would still be discrimination. If they are, does it mean that all the church cemeteries will lose their provisions for exemption?

1440

We have stated certain reasons why we are seeking the exemption. One is that in our case, to take any of our funds and transfer them to the public trustee or to the corporations, our people end up with a loss. It is to the detriment of our public interest, if I might make that point with an illustration or two.

When we, in our little cemetery, go to Canada Trust or one of the other trust companies, say, for the graves we have from 1955 on—it would involve roughly \$3,000—Canada Trust will say to us, "We'll set up your portfolio, but of course we've got certain charges." They have three in particular, an income fee, etc, and then they come down to the bottom line and say they have a minimum fee. I said to the head, "What is that?" He said it was \$300. It would wipe out all of our interest return on that fund if we were to put it, as the act stipulates, in a trust company so there is no point. If we were to transfer it to the public trustee, there still would be charges, as you know, and we would lose probably \$100 on the interest that would come back.

Our petition is to do the best we can for our people so that we will not have a loss. That is what is set out in those reasons under "Cemetery Acts a Detriment to Public Interest," in our case.

There is another very important point. This act, in operation for years in the province, has described perpetual care and it defines it. In the front of the act it says, "'Perpetual care' means the preservation, improvement, embellishment and maintenance in perpetuity in a proper manner of lots and plots in a cemetery or of compartments in a mausoleum or columbarium."

I may have missed it, but I do not see any definition in this act of "care" and "maintenance." We do not know what that means, and our people are disturbed because they have given by bequest to our perpetual care fund for years with the comfort that: "I have given that money as a love token for the cemetery. It will keep on going and we will not touch it for regular expenditures." When we think that here it is moving over, if it does move over, to the care and maintenance, I do not know what that means.

I would hope that if it is put in—if I have missed it, I am sorry—then when it is put in, it would be more than just care and maintenance, but would be the improvement of cemeteries.

I do not wish to be too long, so I will skip ahead. We also feel that the Cemeteries Act, and I am referring especially to those regulations, press state control on our church. From here on, it would determine for us what we must charge for our plots and the direction of a portion of those moneys, the direction and the amount of them. It really comes down on us as a loss or a penalty.

May I make this clear too. In contrast to the previous presentation, we have never charged very much for the plots, hardly anything. At one time, it was 50 cents for a plot a rod square. That is our religious way of doing things. When I go down to the United States and visit our churches in fellowship, they have done the same thing. They buy a little plot of land near the meeting house. If the folks who attend want a cemetery plot, it is marked out, identified and recorded. Beyond that, their love tokens given, there is a fund set up separately from the church fund and it just goes on and operates. The governments in those states have not disturbed that religious freedom. We would like to be able to carry that on, too.

At present we do charge a little more, but it is only, at maximum, about \$12 a grave and \$90 for a full plot of eight graves. This is simply to give the person proper entitlement to the land. Contrast this with Ottawa, and I understand it is maybe \$600 a grave. We are just the opposite end of the scale and we would like to be able to carry on. We only have four plots left in the cemetery, anyway. We are talking about something here that is so minute and yet it is a religious principle that is very dear to us.

Also, we feel that unless in the new act these regulations are adjusted somehow, there is still going to be discrimination left in which churches may be exempt and which churches may not be exempt from operating or investing their own funds.

We leave you some improvements or suggestions, and we do this in all sincerity. We are trying to bring before you today something that is unique. It is not fully unique to all of the province, but it is in many ways. We suggest that in the act you could provide greater flexibility in the regulations so that we might have a little room for these variations.

Second, trust the churches. As I read the Cemeteries Act, Bill 31, there is full trust given to the municipalities, when they take over cemeteries, to invest their own funds on their own. There is trust given to the trust corporations under the Loan and Trust Corporations Act. There is trust to the public trustee, but in a letter we have from the minister it would seem as if this section on the churches may be all changed. Our recommendation is to leave us with that trust.

If we go over the province, and I have taught school in many parts of the province and ministered in southwestern Ontario, I think you have to agree with me that the cemeteries that were beside and adjacent to churches way back in the last century are still almost without exception kept well. I feel they will continue to do that providing there is a flexibility that might be preserved.

Might we ask you to simplify a little bit of the bureaucratic process? I count the word "registrar" 50-some times in that booklet. For us folks who are

out crawling over the cemeteries on hands and knees finding cornerstones, etc., and then having to write a letter to the registrar, "Can we cut this tree down?" it gets a little bit much. If there was more authority given to the inspectors, they could come and we could say: "Now, we want to do this, this and this. Can you right here give us permission?" No problem, we have been law-abiding citizens.

I will give you an example. If you turn to the back, it is the letter to Mr Wrye at first, because we started this back a ways. When the inspector came to visit us he gave us a copy of this plan of a cemetery. It is the Smith cemetery in Ashley township. It is laid out, as you can see, in rows with graves across like this and pathways.

Our cemetery was started about 1828. The graves are laid out in family plots, one rod each way accommodating approximately eight graves. It is on a rectangular piece of ground which is parallel to Highway 2, but because of our religious beliefs, when someone dies the body is just not a body. We have to go back to the Scriptures, "Ye are the body of Christ," and the family unit is the pillar of society; it is established, and we would still maintain that, and our people bury in family plots. All the graves directly face the east. They are not with the piece of land: They face directly east. The remains face east. I can quote you scripture for that, if you like. It is the last words of David. He said, "He"—meaning Christ—"shall be as the rising of the sun, even a morning without cloud; as the tender grass that springing forth by clear shining after rain."

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What I am saying is that this so foreign to the thought patterns of our people that it is very upsetting. If we were to add a section to the cemetery and have to turn all of that configuration around in layers across this way, with no relationship of one grave to the other, our people would be very terribly upset. We are saying that with full sincerity, and that is true of most of the cemeteries out in our area. I stood last winter, in January, and conducted the interment of a very close friend. There were six family plots side by side in that corner of the cemetery, and the little children who stood there represented six generations.

We have carried on, we have demonstrated it for 161 years. We have no problem with the purview of the Ontario government saying about perpetual care funds, "Yes, you have to set moneys aside." If you want to raise it, we have no problem with that at all. We appreciate that. We want the best for not only our cemetery but for every cemetery in the province. But leave enough flexibility where we can continue to operate and invest our own funds. Audit? My wife gets an audit on the books.

Here is an example of flexibility: Instead of always trust companies and the public trustee, if you want to have our treasurer bonded, no problem. Is that not enough security? The funds are perpetual in our minds; we do not touch those. If the treasurer is bonded, there is no danger of anybody taking any of the funds.

That, in brief, is our little submission. I hope you can appreciate our bonding as trustees to our people. We say we have no authority as trustees to take \$3,000, or whatever it comes to when we figure out the graves, and sign that over to the public trustee of the province or to a trust company. I hope you can appreciate that, because those moneys were given not from the sale of plots, but from bequests and love tokens. In the minds of our people, that is

perpetual care. It stays there. It is there, it is locked in and it stays there. We cannot in any conscience at all turn those over. Second, we do not feel we have the money to buy another whole range of perpetual care moneys. That is our presentation.

The Chairman: Thank you, Elder McColl. That was a very compelling presentation.

Mr Tatham: I think that if you carried on in this manner, you would put us all out of a job. We would not be required. Very well done, thank you.

Mr Haggerty: Just one question: Are there any other exemptions under the existing act?

Mr McColl: Maybe you do not have this with you, but in this act, the existing one, it starts on page 50 and it lists that column, this and this of exemptions. Most of those are Mennonite cemeteries, and that is what I spoke about. They are exempt from section 24. We are not asking for that much. We are willing to put up moneys, only we would just like to invest it.

The Chairman: Are those regulations or is that actually written in the bill?

Mr McColl: Yes, those are under the regulations. It is all under section 91; it goes on for several pages.

The Chairman: Perhaps, Mr Haggerty, following up on your question, which is an appropriate one, we could ask the ministry to give us a list of the proposed exemptions under this bill so the committee could have that when we are doing the clause-by-clause debate.

Mr Tappenden: If I could just clarify, the regulations which Elder McColl has pointed out are the regulations pursuant to the current act. The proposals are to not contain exemptions of this nature under the new act. The statute provides that municipalities would be exempt from placing their perpetual care or care and maintenance trust funds with a trustee or the public trustee, but that no other exemptions would be entertained; with the one exception that subsection 76(48) contains regulation-making power for a very broad exemption that would allow, by order in council, an exemption of any cemetery from any provision of the act.

The Chairman: Before you go, what happens to those exemptions that are there now?

Mr Tappenden: The bulk of the exemptions that have been permitted under the current act for those cemeteries that have perpetual care funds but which have not placed them with a trustee or the public trustee—they would be required under the new statute to place those funds with the public trustee or a trust company.

The Chairman: Do they all know that?

Mr Tappenden: It has been discussed with the majority of those that have been exempted.

Mr McColl: May I ask about two points in that regard?

The Chairman: Perhaps you people could pull up a chair. You may get several questions here now.

Mr McColl: That is more or less my understanding from the ministry. May I press that question one step further? Does that mean now that all Mennonite cemeteries will also be exempt?

Mr Tappenden: The issue of who will be exempt under the new statute by order in council is something the government is going to have to deal with. The ministry has not yet made proposals for regulations to cabinet but has discussed with the majority of religious groups that are currently exempted under the statute, or other nonprofit groups, that we will be recommending to the government that there be a minimum number of exemptions.

Mr McColl: If I might respond to that, as we mentioned, we made this petition for an exemption some time ago and we received a letter—and you have a copy of it here—from the Honourable Mr Sorbara last Thursday, saying in the letter that he could not support our plea for an exemption. It is on the bottom of page 3: "I am unable to support your request for a special exemption from the requirements of section 27 of the Cemeteries Act."

This is one of the reasons we made sure we could come here today. With all due respect to your minister, we felt that this decision—keeping in mind that this act, to my knowledge, has not been passed fully and the regulations have not been made—was going beyond the aegis of his authority at this time to make that definite statement without having a full and proper debate about whether we can or cannot.

Therefore, we press you as a committee to help us if you can or to take into consideration fully what this change means if all churches are not going to be exempt.

One other point of argument: Mr Sorbara points out in the letter that one of the reasons for the trustee's or the trust company's perpetual care was for this purpose. If our church were to become extinct some time, as can happen with any church, Mr Sorbara points out that then that fund is there with the public trustee and the revenue would go to the municipality. But may I present this side of that argument: In our municipality, if we should be exempt, we want to have all our moneys intact so that they can all go directly to the municipality, and by provision of the act, the municipality can invest it all on its own, and then it would get the full benefit of every cent of interest that comes. I said at the first that we are old Scottish settlers and now you have proof of it. May I press that argument to you as well as I can?

I would like some of these people to speak.

The Chairman: We are just about out of time, but on this particular matter, Mr Tappenden, I wonder if you could provide to the committee for our clause-by-clause debate next week some of the ramifications of exemptions so that we have a better—or at least I will have; I do not know how other members feel—grasp of what that would mean.

Mr Tappenden: Yes, we would be pleased to do that.

The Chairman: Mr McColl, is there anything else that you want to say before we conclude?

Mr McColl: I think that is the main issue for us. Perhaps that is the note to end on. The key to us is: Where does the church stand in so far as investing its own funds is concerned? I do wish to thank your committee. It has been a delightful experience for us and we will leave you with all the papers and hope that you will give it due consideration.

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The Chairman: Thank you, Mr McColl. We have enjoyed your presentation.

The next presentation is from Wholesale Lettering and Carving Ltd. Are Mr Mueller and company here? Make yourselves comfortable. This is exhibit 17, a partly blue folder which has a couple of other exhibits inside it. Gentlemen, welcome to the committee. The next half-hour is yours.

HEINZ MUELLER

Mr Mueller: My name is Heinz Mueller, and I have with me here Allan Best, the superintendent from St John's Cemetery, Norway, and also Mr Currie. He is a funeral director and monument dealer. I probably have a longer presentation and would like to start first.

The Chairman: As I said earlier, we have divided the presentations up into 30 minutes, so you can use that 30 minutes among the three of you as you see fit.

Mr Mueller: I am the president of Wholesale Lettering and Carving Ltd, Toronto. Wholesale Lettering is the largest monument company in Ontario. We probably carve and letter more monuments than anyone else in Canada. We serve both cemeteries and monument dealers. Our sales are split approximately 50 per cent in each sector.

I would like to express my appreciation to the Ministry of Consumer and Commercial Relations, the cemeteries regulations section, in formulating the proposed new Cemeteries Act. I am impressed that so many various groups have been asked to participate actively. It is obvious throughout the act that the primary goal is to achieve protection for the consumer.

I wish to address the committee on the proposed act as it is written, what I perceive to be omissions from the act and the Ontario Monument Builders' Association's campaign against nonprofit cemeteries, based on a tax-advantage argument.

Section 27 deals with solicitation. I am in full agreement with part I, prohibiting solicitation in hospitals and nursing homes. As to part II, I would have liked to have seen telephone solicitation restricted, perhaps to daytime hours only. As far as I know, in Toronto only one for-profit organization and one monument dealer, who is an OMBA member, practise night-time solicitation.

Section 27 deals with the 30-day cancellation clause. That is for pre-need monuments. I presently service many ethnic customers—Ukrainian, Chinese—who wish their pre-need monuments erected immediately, either for religious holidays or simply for their own satisfaction. In 30 days, the monument, almost surely, is well into production.

I would like to see an exemption provided for pre-need monument sales which are required immediately, as opposed to pre-need sales in which a monument is not needed until a death occurs. To ask a customer to sign a waiver of the 30-day cancellation clause, as was suggested, would not enhance customers' trust in the organization selling.

Monument dealers' rights of installation: Giving monument dealers the right to install monuments, pouring foundations, in all cemeteries frightens me. I worked in many cemeteries in Europe during which time this policy was in effect. The general rule was the less money spent on the foundation, the more profit that the monument company would make. We were instructed by monument dealers to use as little cement as possible and to fill the hole with rocks wherever we could find them. If cemetery personnel were not present, we were under instruction to dig the foundation as shallow as possible.

The result was that the cemetery became very unsafe with tilting monuments, so every year before All Saints' Day we were hired to straighten the monuments, thereby allowing the monument dealer to make more profit again. Of course, the real danger was evident upon digging a second grave, usually years later. Many unstable foundations and monuments caved into the second grave, resulting in accidents and near-fatalities.

To have standards and regulations is fine but once the hole is filled, the foundation cannot be inspected. For larger cemeteries, where hundreds of foundations are poured, the appointing of numerous inspectors would be too costly. I feel that allowing monument dealers the right to pour foundations is not in the public good.

What I perceive to be omissions from the act:

One-stop shopping: The decision not to give a choice—I repeat, choice—to members of the public to make all their arrangements for their loved ones in one single place only serves special interest groups and not the public. In this time of consumer convenience as a priority, it is indeed regrettable that the wishes of special interest groups have taken precedence over the convenience of the consumer. I am sure that strict regulations could protect the consumer.

Term burials: One of the most pressing issues, especially in Metropolitan Toronto, is the lack of available grave space in urban Toronto. The city is encouraging our senior citizens to live downtown. However, in the near future the closest cemeteries will be outside of a 30-mile limit east, north and west.

To have the option of term burial with the right to renew available would be part of a solution for the space problem. This is available presently throughout the world. The cemetery lot cost would be lower for the consumer and the cemetery could continue to be a viable part of the community because of the continued revenue available.

I feel that in Toronto's multicultural population the concept of renewable term burials as an option would be acceptable to many consumers. Please see a letter attached, dated 1980, from the Honourable Frank Drea's office on behalf of the then Premier, William Davis, assuring term burials as a priority in the new Cemeteries Act. This was in 1980.

Public safety: I wish that the ministry would issue regulations regarding the structural safety of monuments. Presently, the monument industry

is still setting very thin monuments, four and six inches, which are structurally unsound and dangerous to the public, especially small children.

Now I would like to come to the Ontario Monument Builders Association campaign against nonprofit cemeteries, based on a tax advantage argument. I am totally in favour of nonprofit cemeteries having the right to sell supplies and services, including upright monuments. I believe that this is in the consumer's best interests.

Nonprofit cemeteries have a very important function in the community. The officers of the cemeteries have no personal gain and the cemeteries are of no burden to the taxpayer. When nonprofit cemeteries are able to provide supplies, more competition is added to the marketplace and competition drives the prices down. This can only benefit the consumer as the cost of these supplies becomes more reasonable.

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In addition, if nonprofit cemeteries are prevented from selling supplies, including upright monuments, their revenues will be much less and there will not be sufficient funds to continue operation. This is particularly true of our smaller and older cemeteries, such as St James' and St John's Norway. These cemeteries will then be forced to approach their municipalities for subsidies and grants. The ministry will notice that the only cemeteries which will support OMBA's position are those that are already heavily subsidized by their municipalities.

OMBA members are only a very small sampling of all the people who are engaged in selling monuments. For example, one wholesaler in Kitchener has more funeral directors whom he is supplying with monuments than there are OMBA members. The number of nonprofit cemeteries selling monuments also exceeds OMBA's membership. It is also notable that twice as many monument dealers as are members of OMBA have chosen not to be members of OMBA. Toronto is a very good example of this situation. I have a list attached in the back. There are 24 businesses in greater Toronto in the industry. One is wholesale only, two are wholesale-retail and 21 are monument dealers. Only four of the 21 retailers are OMBA members.

When nonprofit cemeteries sell monuments, competition does increase. I contacted a number of monument dealers to find out what the tax advantage is for nonprofit cemeteries. Surprisingly, the amount monument dealers pay in property and business tax is, on an average, between 0.36 per cent and 0.50 per cent of gross sales. Corporate tax very rarely exceeds one per cent of gross sales unless the markup is substantially higher than 50 per cent. You have to remember, they are all small companies and they divide the profits between their personal earnings and corporate tax, and usually a wife or some family member is also on the payroll, which is natural.

I have so much more to say, but we have so little time. I thank you very much. Do you want to address the committee?

ALLAN BEST

Mr Best: My name is Allan Best and I am the general manager of St John's Cemetery, Norway. This is a religious, nonprofit cemetery operated by the Anglican Church of Canada.

Let me first start by saying that the proposed new Cemeteries Act has

been long awaited. Some components of the new act will serve our industry well. However, from the standpoint of old cemeteries like St John's, there are some particular elements of the act that will financially cripple our future viability.

I am specifically referring to cemeteries being responsible for all upright monuments, the majority of which were installed by outside monument companies in the first place. Given this scenario, St John's Cemetery will face an approximate cost of \$65,000 to correct these problems.

The source of these needed funds presents our cemetery board with a very serious problem, the answer to which remains unsolved at this time. St John's Cemetery would not be able to operate without the right to continue to sell cemetery services. I am referring to monuments, flat markers, inscriptions, etc. Seventy per cent of our income is comprised of supplementary services. Without this income, our operation would halt within three months.

As for allowing outside companies to install foundations for monuments, this open policy could create an even greater problem than the one we now face. I am referring to cemeteries' responsibilities for monuments. The installation of foundations should be left within cemetery operations. We certainly could not afford a repeat of past mistakes in this area. A survey of cemeteries in general will reveal these problems, like leaning monuments sitting on top of poorly constructed foundations.

In my professional opinion, the installation of these foundations must be closely scrutinized. We cannot afford anything less than quality installations. To touch base on the new care and maintenance fund, the proposed 15 per cent increase for the new care and maintenance fund, rising from a 35 per cent requirement to 50 per cent, comes 35 years too late for St John's Cemetery. The additional 15 per cent requirement jeopardizes our yearly operative cash flow.

Just to touch on a couple of points Mr Mueller talked about, back in 1983, St John's Cemetery board of trustees approached the municipality of the city of Toronto about taking over our operation. After much debate and much investigation, they decided that they would not take it over, even though at that time it was required by the Cemeteries Act that if a cemetery was not allowed or able to continue to function, it would have to take it over by law. They took a standoff approach at that time, and I believe they would continue to take that type of approach.

As far as nonprofit cemeteries selling supplies and services is concerned, if we had not decided to do this 12 years ago, I am afraid our cemetery gates would have been closed at least 10 years ago. I would like to thank the committee for giving me this time to make my presentation. I hope you will consider what we have presented this afternoon. It is viable for cemetery operators like ourselves. I have been in this business for 33 years and I would like to continue for a few more years. Thank you very much.

JAMES L. CURRIE

Mr Currie: My name is Jim Currie. I am a funeral director and monument dealer from Chatsworth, Ontario. It is a small town in Grey county near Owen Sound. Being a funeral director in a small town, I have many tasks to perform to make our country cemeteries run smoothly. I sell cemetery plots, open and close graves, fill in sunken areas and see that graves and bare spots

are seeded. I also install monuments and markers and I repair old monuments that are unsafe.

People do not hesitate to call me, day or night, seven days a week, if they wish to purchase a grave or to assist them in finding the grave of a long-lost relative in order to complete their family tree. I do not receive any remuneration for either of these tasks.

Within a 20-mile radius of Chatsworth, we have over 30 small cemeteries, some of them only having one or two burials a year. Most of these cemeteries have help for cutting grass but do not keep up with other necessary maintenance. During the past two summers, I have put 150 old, decrepit monuments back into safe condition in about eight of our country cemeteries. I can foresee endless hours of work still required in this area to make these cemeteries a safe place for their families and visitors.

It is my personal feeling that if big business had to do the job, it would not get done because of the unaffordable cost involved. I am in the business of selling monuments because in a small village the income from the funeral business alone is not enough to exist on. Local residents have expressed a confidence in my work, and I feel I should be allowed to continue in this much-needed work in their best interests. Thank you.

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The Chairman: Thank you, gentlemen. We have had a presentation from a manager of a cemetery, a monument builder and a funeral director. Do each of you represent views of your own, or are you the members of an association whose views you are representing here this afternoon?

Mr Mueller: I am one of the founders of the Ontario monument association. I also belong to the American association. I am a wholesaler. My membership was not renewed by OMBA because I represent a different view. They do not tolerate that. But many wholesalers are quite upset about the confrontational view that OMBA has taken.

They cannot appear before your committee because they are its customers. They feel that this confrontational attitude will harm the business in the long run because we are in a time of change. More and more small monument dealers will close and only sales offices will remain, usually owned by the larger monument dealers. Therefore, we will in time have much less competition.

The Chairman: Perhaps I am missing something here. Why did you and the rest of the association part company? What was the main issue?

Mr Mueller: The main issue was the future of the industry. I started to supply the cemeteries. That was the main issue.

The Chairman: You were supplying monuments to cemeteries?

Mr Mueller: And markers, yes. That is a long time ago.

Mr Tatham: I am just wondering, how do we handle the situation in some of the smaller cemeteries where they have problems with small, thin stones? How do we look after that?

Mr Mueller: I attached a letter at the back which I addressed to the

cemetery branch. It is actually quite simple. It says that the main force to the top of the monument should not exceed 200 pounds. We did figure this out and we found that the regulations of Toronto Trust Cemeteries would be an excellent example. They do not allow any four- or six-inch monuments; they are all eight inches and have to increase as the monument goes higher. It is very simple.

Mr Tatham: What about the older markers, though, in the older cemeteries?

Mr Mueller: That is a problem. They have to be looked after and if a part sinks, secured, and if something is still dangerous it should be taken down because the danger is too great, for small children especially.

Mr D. R. Cooke: Sometimes politicians need to have things made very simple. I may be in the same boat here. We have not heard from OMBA yet, although we have heard some committee members suggest that there may be a position that it wants some regulations that would keep other interests from being involved in its activity. I take it you do not agree with that.

Mr Mueller: No, this is a free country. It is the same if you do not let Eaton's sell food any more. It is an evolution that has taken place. Many people will sell all kinds of cemetery supplies, whatever is more convenient for the public. The public is most important. They want to keep their own market. I do not blame them.

Mr D. R. Cooke: No, they try. In so far as the market is concerned, there are no problems and I take it you are happy with the legislation. You have criticized it in some specific areas, but in so far as our regulatory activity is concerned, do you feel it will work well?

Mr Mueller: Very much so.

The Chairman: Just for your information, Mr Mueller, on Thursday morning at 10 o'clock the Ontario Monument Builders Association appears before the committee to make a presentation, just in case you want to attend.

Mr Mueller: My former friends.

The Chairman: Thank you very much for your presentation.

Mr Mueller: Thank you for giving us the opportunity.

The Chairman: The next presentation is from the Consumers' Association of Canada, the Ontario division specifically. We welcome you to the committee and we look forward to your comments. As you know, we are allowing 30 minutes for each presentation to do with as they wish. If you would introduce yourselves, we can proceed.

CONSUMERS' ASSOCIATION OF CANADA

Mrs Smyth: Good afternoon, ladies and gentlemen. I am Peggy Smyth and I am from Sault Ste Marie, Ontario. I am the immediate past president of the Consumers' Association of Canada, the Ontario branch. Accompanying me is Barbara Beck from Peterborough, who is also a past president of the Consumers' Association of Canada in Ontario. She is currently a lay member of the Board of Funeral Services as well.

If you are thinking that it is odd to have two past presidents appearing before you, there is very good reason for this. The revisions to, and discussions about, these pieces of legislation have been going on for a very long time. They began during Mrs Beck's terms as president in 1986 and 1987, continued through my term and now we have a new president and the discussions continue.

We appreciate the opportunity to make comments to your committee. The Consumers' Association of Canada in Ontario is an independent, nonprofit, voluntary organization which represents and informs consumers and advocates action on their behalf to improve the quality of life. CAC is the largest organized consumer group in Ontario. Its main objective has been to provide a strong voice for the consumer in dealing with government, industry and business. Consumer advocacy, consumer education and consumer representation have remained its major activities over its 42-year history.

CAC has standing committees which deal with food, health, economic, energy, housing and environmental issues. In addition, CAC deals with many other issues on an ad hoc basis. This represents both a strength and a weakness of our organization. Lack of monetary and human resources prevent it from taking a very proactive role, as it finds itself more than busy reacting to requests for the consumer view. CAC does, however, have the ability to tap the grass roots. It can provide the consumer viewpoint from broad geographic areas. In 1987, CAC made two major submissions to the Ministry of Consumer and Commercial Relations concerning its plan for a new strategy for consumer protection and business practices in Ontario. CAC's response to the Directions Report and the supplementary reports of the legislative review project was made in October 1988. In both 1987 and 1988, CAC submissions included sections dealing with the death care-bereavement industries.

In the preparations of these briefs CAC successfully used its technique to call upon its local associations in Ontario to address specific consumer issues. In addition to active CAC volunteers, it sought out other individuals in the community with expertise in a particular issue. Together, an informed consumer view was formulated. In 1989 CAC developed an additional network of volunteers. Approximately 200 volunteers from across the province, representing various degrees of expertise, are now in place to be polled and to give input to submissions to be made by our association.

A consumer usually makes a purchase from the death care industry once or twice in a lifetime. Under these circumstances, there is very little opportunity to learn from experience, or any incentive to complain if something does go wrong. Consumers experiencing the grief of a death in the family or facing the possibility of their own deaths, are vulnerable consumers and deserve all the protection our society can give them.

Whenever consumers act in situations in which they have little experience, opportunities for abuse exist. In purchases in the death care industry, the inexperience of consumers is compounded by the fact that decisions must be made by them in a very limited time frame and often when their psychological state is not normal.

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Representatives from our association have reviewed bills 30 and 31 as they have been proposed and are here today to make the following comments for your consideration. Some of these comments were already submitted in writing

to the ministry in May 1989, but we feel they bear repeating in front of this committee.

Consumer protection is CAC's major interest in this industry, as in any industry. Our comments will be confined to a few of the sections in the act which impact the most on consumers.

Provisions in the acts dealing with cooling-off periods for purchases of services and/or supplies, price lists, public information, a ban on solicitations and establishment of a compensation fund are all welcomed by CAC.

It is our view that all arrangements in the death care industry must be by written purchase agreement. The purchaser of any goods or services, whether in a pre-need or at-need situation, must be provided with a clearly written statement setting out exactly what has been purchased and the cost of each supply and service. There should be no charges for services which have not been specifically requested. It is absolutely essential that the contract include the names and addresses of those who will be providing each service so that the consumer or family knows from whom it can obtain further information. Package deals must include prices of individual components of the sale. Warranty of any supply or service should be noted. Contracts, to be valid, need to be signed by both the consumer and the vendor. A copy of each contract must be given to the consumer.

Under Bill 31 much reliance will have to be placed on the registrar and the staff of the Ministry of Consumer and Commercial Relations. They are the ones who will be reviewing the cemetery bylaws, price lists and advertising. The legislation provides for appeals to the Commercial Registration Appeal Tribunal by cemetery owners of any orders made by the registrar. What redress do consumers have? It has been suggested that a consumer might consult the ministry or the courts, but we are not sure if this is an adequate solution. We urge your committee to address this concern.

The legislation provides that consumers should receive a copy of the cemetery bylaws at the time a contract is signed. If these bylaws are so extensive that it is impossible to give them to the consumer prior to contract-signing, then some other method must be found to give the consumer the information he or she requires to determine if these bylaws are too restrictive to suit him or her. The 30-day cooling-off period will be of some assistance in the case of pre-need purchases, but not when the purchase is made at the at-need phase.

Section 26 states, "Every owner shall make such information as is prescribed available to the public in the manner and form prescribed." No doubt this will be defined in the regulations. The ministry's fact sheet accompanying the draft legislation in March 1989 states that, "reasonable information, including price lists, must be provided over the telephone upon request." However, it seemed to be missing in the 12 June information, and CAC urges this committee to recommend that telephone requests for information be included in the regulations.

CAC also believes that it is the intent of the ministry to ensure that consumers in Ontario have access to a simple, low-cost, dignified funeral. Therefore, it must be deemed to be professional misconduct if a family or individual is subjected to pressure to buy more services than are requested. If a funeral establishment advertises a low-cost funeral without including all the components of that funeral, that also should be considered professional

misconduct. In other words, there should be no add-ons unless at the consumer's request.

In the case of transfer services which are to be regulated, it must be clearly stated in regulations what these services can provide. In our view, a transfer service supplies a basic disposition; that is, it receives the call from a family, removes the body to the cemetery or crematorium and supplies the official documentation required.

The reasons a consumer may choose to deal with a transfer service instead of a funeral establishment are personal, but we suspect that some choose it because of price. Others choose it because they do not want a traditional funeral and may choose it because they have ceased to have any religious affiliation. They opt for a memorial service of some kind without the body present. While we do not think that a transfer service must be operated by a trained funeral director, the Consumers' Association of Canada wants to be assured that there are some standards of practice to be applied to ensure that the families choosing an alternative to the traditional will be assured of dignity and respect.

CAC is pleased to see the provisions for care and maintenance funds and for pre-need assurance trust funds outlined in Bill 31, the Cemeteries Act. As stated in the Directions Report of the legislative review project, "There is a need to tighten the control and operation of those trust accounts currently required by industry specific legislation, to ensure that they fulfil their intended purpose."

Records and information on either trust fund to be provided to purchasers of either trust fund; the establishment, maintenance and operation of both funds; the payments into and out of the funds; the fees that may be retained by trustees of both funds, and the uses to which owners may apply income from care and maintenance funds are matters of great concern to CAC. These are to be set out in the regulations yet to be made. CAC hopes that these regulations will be written in consultation with industry and consumer groups so that the financial protection of consumers is ensured.

CAC is indeed pleased to see that a compensation fund will be a requirement under Bill 30. It is gratifying that the majority of the members of the committee to oversee the compensation fund will be lay members. CAC has advocated this position in our previous briefs to the minister. In our view, it will be necessary to have an interim financial arrangement until the compensation fund reaches its maximum level of funding. Consumers, once they are aware of a fund, will not be patient if they have to wait several months for a settlement. The fund must be maintained at a level sufficient to settle claims which result from a defalcation.

Consumers must be advised of the existence of the fund, the circumstances under which they are entitled to compensation, the method by which they apply for compensation and any time restriction which may apply.

CAC has been on record for a long time as being violently opposed to solicitation by telephone, electronic or any other telecommunication gadgetry which may come along in the future. In a survey carried out very recently by a large telephone company, 96 per cent of its customers objected to telephone solicitation for any purpose. Surely that can be regarded as a very strong statement from consumers about this issue. We sincerely hope that there will

not be any softening of the government position as stated in Bill 30 and Bill 31.

Our association is pleased that solicitation is to be prohibited in nursing homes, hospitals and other similar institutions. However, as noted in our comments of 19 May 1989 to the Honourable William Wrye, we want to see the act set out very clearly that solicitation to individuals is not allowed in any form, anywhere or any time. Technology is developing so rapidly that it is difficult to predict what methods may be available in the future. CAC wants to be assured that the acts are written now in such a way as to be proactive rather than reactive, which has been the case with much of the consumer protection legislation in place at the present time.

The Funeral Directors and Establishments Act gives the power to administer the act to a board of directors. The principal object of the board is to administer the act in order that the public interest may be served and protected.

It seems to us that it is difficult for a board of directors, the majority of whom are members of a profession or business, to protect the public interest or even to be seen to be protecting the public interest. It has been our view, which has been shared by others, that even if they are able to leave their funeral directors' hats at the door of the board room, the public perception is that the board is self-serving and not capable of carrying out its mandate because of the makeup of the board. CAC's position is that the number of lay members on the board should be greater than the number of industry representatives.

However, it is not sufficient protection to be merely concerned about the number of people on the board. Clearly, the board must be large enough to carry out its duties, but more importantly, both lay and industry members must be chosen for their skills and expertise. Political affiliation should not enter into the selection process. It is hard to believe that the appointment to a board with a per diem of \$78 is considered to be a political plum.

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According to the act, members "appointed under paragraph 2 of subsection (1) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council." CAC disagrees with this method of determining expenses. The industry funds the activities of the board through fees assessed and we believe that the Board of Funeral Services is entitled to determine and pay all expenses incurred by board members in the course of carrying out their duties. The government should not be deciding how much a member of the board will receive for his or her dinner.

During the past three years, CAC has met individually or in groups with representatives of the Ontario Funeral Service Association, the Ontario Monument Builders Association, the Ontario Association of Cemeteries, Memorial Gardens, the United Senior Citizens of Ontario, the Memorial Society of Toronto, the Ontario Catholic Cemetery Conference and the government on the issue of separation in the industry. On no other issue in recent years has CAC received so much industry representation. During these meetings it was apparent that the separation issue is one which must be resolved now and finally. This decision will determine the type of death care or bereavement sector that will prevail in Ontario.

CAC, in examining the problem of separation of the industry sectors, has come to the conclusion that Ontario consumers have been very well served by a death care sector that is still substantially separated and regulated.

CAC supports the position that no cross-ownership either directly or through holding companies be allowed and that no funeral establishment be permitted on cemetery property. CAC has found no demonstrated need for one-stop shopping and believes that this suggestion of a demand is being put forth by certain segments of the industry. At this time, there is no lack of consumer choice in individual segments of the industry. However, CAC has been reminded that in some small rural communities in Ontario, complete separation may not be practical. In these isolated instances, consumers may not be well served and so some compromise may have to be made.

To allow combination selling of a cemetery plot and a funeral offers the opportunities for tied selling, predatory pricing and cross-subsidies. If a cross-subsidy is an advantage for the consumer who is purchasing from the subsidized area, it is certainly not for the consumer purchasing in the area from which the subsidy is taken.

While CAC has supported deregulation in some industries, it is very aware that deregulation may lead to corporate concentration, possible use of a dominant position and the reduction of consumer choice and price competition. It appears that this may be the case in the death care industry. Interment and death care services are a universal need. Universal needs have traditionally been well served by the model of a regulated public utility.

CAC supports the new legislation which prohibits funeral establishments from being located on or operated in connection with cemeteries or crematoria. Despite intense lobbying, our position has not changed.

It seems to CAC that a bereavement services advisory committee, as envisioned by the Honourable Mr Wrye is an idea worthy of consideration.

On 1 March 1989, Mr Wrye announced that a minister's advisory committee, independent of this legislation, would be established with representation from all key industry, nonprofit participants and consumer groups. He stated that the committee was necessary "to keep pace with emerging issues and trends and to foster a better understanding within the bereavement sector." The advisory committee would be asked to review a wide variety of subjects, including: trends toward cremation and other forms of disposition; the increase in diverse burial and funeral practices by multicultural and religious groups; consumer education and marketing practices.

CAC first advocated the formation of such a committee in a letter to the Honourable Monte Kwinter in 1986. We still support this concept and if it is established would expect to be a part of it.

In research done to prepare its 1987-88 briefs to the legislative review project, CAC identified consumer education or awareness as the number one priority. At its 1989 annual general meeting, CAC delegates again affirmed consumer education as the number one priority and CAC is not referring just to education in the formal school system. In the case of the death care industry, the education is most likely needed long after one has left the traditional education system.

Consumers' interests will be well served by giving them access to information about funeral planning and the various choices and costs involved

and encouraging planning in advance of need. It is not sacrilegious to shop for a funeral, when it is one of the largest expenditures we or our survivors will ever make. Consumer information needs to be provided in a variety of ways in order to reach all consumers.

The Ministry of Consumer and Commercial Relations, along with a business-consumer consultative group of which CAC has been a part, has been discussing methods of achieving more consumer and business awareness concerning the new consumer protection code.

Use of media for innovative programs and new technologies are being considered. If success were achieved in this regard, consumers would be better informed of their rights and responsibilities and better able to participate in all marketplace activities, including those in the death care sector.

CAC's position has been that the government is best equipped to provide information in a completely unbiased manner. However, since there is going to be a requirement under Bill 30 and Bill 31 that information be provided to a consumer, it may be that the ministry can assume responsibility for seeing that all information given is done so in a factual and completely unbiased manner by the various players in the death care sector.

I would like to thank you very much for your attention, and I urge you to give careful consideration to my remarks on behalf of the consumers' association. I wish you well in your deliberations, and when the legislation is finally enacted, the Ontario branch of the Consumers' Association of Canada will use its resources to assist consumers to be better informed of their rights and responsibilities with regard to the death care industry.

The Acting Chairman (Mr Tatham): Thank you very much, Mrs Smyth. Mrs Beck, do you have something to say?

Mrs Beck: No. I would be pleased to answer any questions, but I have nothing further to add.

Mr Farnan: Let me pose the question for you. It concerns regulation. On page 9 you talk about the Funeral Directors and Establishments Act and the principal object being that the public interest may be served and protected. Now, it may be that the committee you referred to further back, the advisory committee for bereavement services, is something of a watchdog committee.

It is always, in my view, a healthy process when professionals regulate themselves. I can see where you are pointing out a conflict, but I think you could look at all sorts of other areas where professionals are involved in regulation. I am not suggesting for a minute that we do not need a watchdog, an Ombudsman or whatever, but I do believe there are professional standards and there are standards that professionals impose upon themselves. How would you respond to that? Would the advisory committee act as a watchdog?

Mrs Beck: I would like to go back to your comment about professionals regulating themselves. When the public interest is involved, if you have five funeral directors and three lay people, it does not matter how strong you are, how much knowledge and expertise you have in a particular area, you are not going to be able to sway anyone's opinion. I think the changes in the legislation have certainly shown that there have to be some changes made in this particular industry.

It could be that when Bill 30 and Bill 31 come in, perhaps I will feel differently. At the moment I do not feel differently. Under the Cemeteries Act there is no such board, and to my way of thinking, perhaps this advisory committee would be looking more at the cemeteries part of it and perhaps playing a bit of a watchdog role as far as the funeral establishments go.

1550

Mr Farnan: My understanding is that CAC, I am not sure about the Ontario branch, has in the past discussed and promoted a concept—which was certainly picked up by my former colleague Mel Swart—of an Ombudsman for consumers. One can see that the volume of protection that comes under the Office of the Ombudsman as it presently is constituted is so broad and so vast, and the energies of the staff are so diluted, that to be effective is extraordinarily difficult. I think it almost reflects your own position, where there is so much in the field that you used an expression of reacting rather than being proactive. Is that still a position that CAC endorses?

Mrs Beck: For an Ombudsman? It has not been our position in the last several years, I think, because we have seen what has happened in the Ombudsman's office, where I am sure there is a big backlog. At least I am told that in my hometown. So I do not think it would work.

Mr Farnan: Okay. I raised this issue because it is something my party, the New Democratic Party, through our former critic, Mr Swart, traditionally has advocated from time to time. It is precisely the broad range of issues that come under the Ombudsman area that makes it difficult for the Ombudsman's office to be effective. But consumer protection is so important, should we not be thinking not simply in terms of just an advisory committee—and not simply just in terms of the bereavement industry—but of an Ombudsman's position with a distinct focus in terms of consumer protection in this whole area? Is that something that is a valuable direction in your mind?

Mrs Smyth: In the legislative review it was suggested that there be a general consumer complaints board—we have discussed this—that would be some kind of general arbitration scheme for any sort of problem that consumers would have in the marketplace. That probably would be a very good thing, if the money could ever be found to set up something like that, but today we want to talk about lay participation on the Board of Funeral Services, which already exists. We would not want you to think that this advisory committee we are talking about would in any way replace lay participation on that board. That would be something in addition to it.

Mr Farnan: There is one other question I have. It is very brief.

The Acting Chairman: We only have seven minutes left and we have two more people lined up. Maybe we will come back to you.

Mr Farnan: Okay, no problem.

Mr D. R. Cooke: My question really is carrying on from Mr Farnan's. The whole purpose of this legislation is to make certain that the consumers' interests are satisfied, so we really should be coming from the same purpose. Your brief has been very good and it has set out a lot of concerns that we should be careful of.

I am a little concerned at your response to Mr Farnan's questions concerning the board. Mr Wrye has indicated, as you suggested, that there

would be another board, an advisory committee for bereavement services. You have indicated that you feel you should be a participant in that committee, and that makes a lot of sense to this member. The board surely is serving a slightly different purpose, is it not?

Mrs Beck: Oh, yes.

Mr D. R. Cooke: All right. I would suggest to you that the best conceivable way you can regulate a profession is to get the profession involved in regulating itself as much as possible. There is nobody who would be quicker, I am afraid, to be a policeman in many of these circumstances than, say, a competitor. I am really surprised at your cynicism when you suggest that the competitors are going to cover up.

I come from the law profession. I do not practise now, but I practised for years and years, and I do not think the consumers or the government or the Legislature could do nearly as good a job as the law society does in policing itself, because it is so diligent. Frankly, it works incredibly at arm's length when it comes to policing and disciplining society members.

Mrs Beck: That sort of emphasizes and strengthens my position, that what is more important than the composition of the board, perhaps, is the people who are on that board. I do not believe that in any of these boards where there is public participation it should depend on lobbying your MPP.

Mr D. R. Cooke: Who is talking about lobbying the MPP? We are talking about whether consumers have the majority or funeral directors have the majority.

Mrs Beck: But what I am saying is that the members who are on the Board of Funeral Services are exceptionally important people and that they should be chosen for their expertise and their knowledge, not what colour of tie they wear. I am quite convinced that that has happened in the past.

Mr D. R. Cooke: All right. Then I am misunderstanding what you are saying. You are not objecting, then, to members of the profession being on the board?

Mrs Beck: Not at all. They have to be there, but consumers need the protection that when they make suggestions and are trying to assist that there are sufficient numbers that they are not always out-voted.

Mr D. R. Cooke: You are suggesting that some of the board members are chosen for partisan party reasons?

Mrs Beck: Yes.

Mr D. R. Cooke: And would reflect that in their voting?

Mrs Beck: They may not reflect it in their voting. What I am saying is that they may not be the right people for the job. Just because you are a member of the Conservative Party or Liberal Party, I do not think that qualifies you to be on the Board of Funeral Services.

Mr Farnan: Do not leave us out.

Mrs Beck: Or the NDP, sorry.

Mrs Cunningham: Thank you for your interest. We have had many groups come before the committee, and I must say the consumers' association is always welcome. There is sort of a feeling of nonpartisanship, just as you present it to us.

I do have a couple of questions, because I always like to see other people solving our problems some days. On page 3, you talk about the ban on solicitations. You, of course, are not the only group; this whole bill is supposed to be about banning on solicitations. Because I look at you as being such an objective group, I am going to ask you a question I have not asked anybody else.

In some of the letters I have received in the last two or three weeks, people are very much concerned about solicitations. They are also concerned about not being able to get good information. I am just wondering if your group talked about that.

Mrs Smyth: I think there are some provisions—I am not sure—in both bills for the provision of information to consumers. We have talked about what would be the best method of getting this to consumers; we certainly do not want to be phoned about this, we have said fairly clearly. The ministry provides excellent information in other industries it regulates, and we feel that if it could oversee the information given, that would probably be the best way so it would be unbiased.

Mrs Cunningham: So the ministry should be the one doing the informing?

Mrs Smyth: At least vet the information.

Mrs Cunningham: Here is another question for you, then. Yesterday afternoon we had some representation from a person representing a religious cemetery, for lack of a better word. The cemetery had always been for the Anglican religion and that was their burial ground. We have had others today. They look at this legislation as being restrictive of people getting information because they are not allowed to make phone calls to their own members. Did you look at that part of the bill at all, or did you have any thoughts on that?

Mrs Beck: I do not think there should be any shortage of information and I do not think you really get very good information over the telephone about such a subject. At least, when I have been called I certainly did not feel that the person was genuinely interested in my point of view. I felt that the person was simply there as a hard sell to get into my house. What we are suggesting is that certainly in funeral establishments there are literature racks about bereavement societies and how to cope with death and so on; that there could be information made available in places like that for people simply to pick up.

1600

Mrs Cunningham: Even on behalf of the ministry? The ministry could put out nonobjective types of information in a funeral establishment? Is that what you are saying?

Mrs Beck: No. I think the funeral establishments are going to be legislated to provide information to consumers. What we suggested in our meetings is that that be available; that I could walk in off the street, I do

not have to talk to anyone, that I can pick up some literature about the funeral establishment, the kind of service it provides and so on and go out without talking to anyone. I would expect I could go into Little Lake Cemetery and do the same thing.

Mrs Cunningham: On your last point about advising the ministry, either around how this legislation is implemented or the results of the implementation, and the problems that may arise: Although on the surface it looks like there are only two or three issues to be looked at, there are tremendous implications of this legislation, where we have had people who are in this business come to us and say that if some of the financial restrictions and investment restrictions of the bill are passed, they will go out of business. That is pretty serious stuff: family businesses that will no longer be able to operate. So some of us have to give this a lot of thought; we have been trying to do a lot of listening.

So these advisory committees, I think, are extremely important. Yesterday, the senior citizens' group appeared before us and said it wanted to have some input. They used the same kind of approach that you do. We were all looking at that as being a possibility, but we were not certain at what stage this committee should be operative. The government said it was a committee it would consider, but not as part of this legislation. Have you looked at it as being either part of the legislation, otherwise a legislative committee or one by regulation, or are you looking at it as an advisory committee that shall be struck by the government at an appropriate time? Did you have any thoughts on that?

Mrs Beck: I think that is what we were thinking of.

Mrs Smyth: We thought that the decision had been made that that is what the committee would be, outside the legislation. Basically, that type of thing has been going on in the last few years with input to the legislation, groups being brought together. If it was a formalized thing—however, advisory committees are great but they do not really have much power.

Mrs Cunningham: That is why I am asking the question.

The Chairman: We had better wrap up this presentation.

Mrs Cunningham: You want to end on that, that they do not have much power? That is fine by me, if you want to end on that note.

The Chairman: Thank you very much for your presentation.

The next presentation is from the Loewen Group. Mr Loewen is here and I think Mr Hyndman is here. Gentlemen, welcome to the committee. We have heard your name in dispatches during the last couple of days, so we are glad to have you here.

LOEWEN GROUP INC

Mr Loewen: It is certainly an honour for us to be present today. We cannot help but respect your responsibilities greatly, having served a term in the British Columbia Legislature myself. I appreciate Peter Hyndman, who is a director in our company from its inception, as well as legal counsel to our company, with a great interest in consumer concerns, his background being the former Minister of Consumer and Corporate Affairs in British Columbia. I would like to ask him to make the official presentation this afternoon.

Mr Hyndman: What I would like to do, very briefly, is to read our submission, which hopefully will not take very long, then Mr Loewen and I would be pleased to field questions from the committee. I think the clerk was able to distribute copies of the written submission.

If I may, I will commence at the section of the first white page marked "Background," to say thank you for this opportunity to appear before the committee.

It will be helpful if we provide some brief background about ourselves and our company. Mr Loewen, our chairman and chief executive officer, is a licensed funeral director. Born and raised in Manitoba, he took his funeral service education there and also in Ontario. His father was a funeral service director and the Loewen philosophy about funeral service is based largely on the Loewen experience in seeing the importance of proper funeral service to a small community. We believe that philosophy, in particular, that funeral service is precisely that, a service to the community and not primarily a business, applies today as it did yesterday and in big cities as well as small communities.

Mr Loewen moved to British Columbia and established his first funeral home in New Westminster in 1969.

I have been associated with Mr Loewen and the company for more than four years, both as legal counsel and as a director.

The company has developed steadily since 1969. Today, in Ontario, we operate funeral homes in 17 locations employing about 200 persons. In Canada, we operate funeral homes in seven provinces and employ more than 500 people. Although our company operates several cemeteries, our primary emphasis is on the funeral service aspect of the bereavement sector.

Since 1986, our company has sought to maintain a constructive dialogue with the ministry concerning updated legislation for the bereavement sector. We want today to acknowledge the co-operation we have received from the ministry. The ministry has been accessible on a regular basis and has provided a number of opportunities for the frank interchange of ideas on policy issues.

In following your guidelines, this written submission will be brief and we look forward to your questions. In the pages following, we will reaffirm a number of desirable policy goals that are generally met by the proposed legislation, suggest two areas in which the legislation could be strengthened and provide recommendations.

Specific policies, or specific policy changes, should fall within public policy goals that are clearly defined, sensible and consistent with each other. The Loewen Group feels strongly that the goals of public policy within the bereavement sector should be to ensure for the consumer, first, professionalism and high standards in the services offered, second, consumer choice, third, consumer awareness of the right to choose, fourth, accurate information about the choices available, and fifth, an always nonpressured environment for the consumer within which to make those choices.

In short, the public is best served in the bereavement sector if it is aware of its right to make choices and that those choices be based upon accurate information and be made in a nonpressured environment.

Flowing from these policy goals, the Loewen Group has consistently advocated the following specific policies. These policies are consistent with each other and serve the public interest sensibly and well.

First, combinations, and particularly on-site combinations, should be prohibited. Second, telephone solicitation should be prohibited. Third, door-to-door solicitation should be prohibited. Fourth, commission selling should be prohibited. Fifth, the consumer should at any time have an automatic right to a full refund of moneys paid under a pre-need contract. Sixth, funeral services should be permitted to be sold only by licensed and duly qualified funeral directors. Seventh, licensing and strict professional licensing standards are desirable. The licensing body should have significant industry representation.

Moving now to the legislation before us, the current Legislature is to be commended for the priority it has given to updating the legislation in this most important field. The proposed legislation, in general, is a good step forward and deals very well with a number of the public interest goals cited above. However, the Loewen Group is here today in response to your request for further constructive comment. We suggest further improvement of the proposed legislation in these areas:

First is prohibition against combinations, particularly on site. Combinations should be clearly and strongly prohibited. They restrict choice and inevitably lead to tied selling. There is no concrete evidence that they provide lower prices. There is no factual evidence of a consumer call for one-stop shopping. Further, combinations pose a very real threat to the survival of small business.

A number of the states in the United States prohibit combinations. The rationale for a prohibition of combinations was recently well stated by Judge Bell of the Michigan circuit court who said:

"Common sense dictates that a person who owns and or operates both a cemetery and a funeral establishment, ie a 'combination', occupies a superior business position with respect to rendition of both burial and funeral services. It is not unreasonable to anticipate that permitting combinations could lead to gradual monopolizing of the market."

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We understand the prohibition against combinations is intended to be made in regulations, not in the legislation. Because of the critical importance of this topic we recommend:

1. The prohibition be permanently enshrined in the legislation itself, rather than being left to the regulations;
2. The wording of the prohibition be comprehensive in scope and include prohibition of indirect, or attempts at indirect, combinations as well as direct combinations;
3. Included within the regulations to be then made pursuant to the legislative prohibition should be the power (a) to add from time to time to the definition of business arrangements that would constitute direct combinations as prohibited by statute, and (b) to fully investigate any

business arrangement to determine if it constitutes a prohibited combination, direct or indirect, and to take remedial action if necessary.

Second is the consumers' right to know and the level playing field. As earlier stated, specific policy goals should include the provision of accurate information to the consumer and full knowledge by the consumer of the consumer's right to choose.

Under existing legislation, a very aggressive business is being marketed under the title The Simple Alternative, which we summarize as TSA.

TSA appears to be the product of a business arrangement between Toronto General Trust and Canadian Memorial Services. Through a heavy advertising program, TSA is presenting itself as a low-cost, nonprofit, public service-oriented alternative to traditional funeral service. A copy of a recent advertisement is attached.

The advertisement suggests that TSA provides services to the public not provided by traditional funeral homes; provides these services and others at a cost significantly lower than would be the case with traditional funeral homes; makes no profit in these services; and is not a normal business but a philanthropic organization.

The advertisement, in our respectful judgement, is grossly misleading. Many funeral homes provide the same services at costs competitive with TSA. In doing so, they pay their taxes as good corporate citizens and must earn a reasonable profit to stay in business and keep their employees at work. We understand there is some question as to the degree to which TSA is governed by existing legislation.

We recommend, for the benefit of consumers having accurate information and in fairness to all duly licensed funeral service directors in Ontario, that the playing field be made level by ensuring that TSA and businesses in the bereavement sector like it are clearly governed by the new legislation and regulations; that the advertising standards division of the Ministry of Consumer and Commercial Relations undertake an inquiry to ascertain if current TSA advertising contravenes Ontario's consumer advertising regulations and take remedial action if necessary; and that the new regulations provide that no person, firm or organization in the bereavement sector may utilize the phrases "nonprofit," "public service" or the like without the express written consent of the registrar.

Our company is proud to be a corporate citizen of Ontario. The legislation you are now considering will impact upon Ontario residents associated with the Loewen Group in several ways: upon our Ontario employees, upon our many Ontario shareholders and upon several senior Ontario financial institutions with which we do business financing.

Thank you for the opportunity of presenting these views on behalf of all of those in Ontario associated with the Loewen Group and we welcome your questions.

The Chairman: Is there anything you are aware of that would prevent any funeral parlour from running an ad the same as that?

Mr Hyndman: I am sorry. I did not hear all of your question.

The Chairman: Is there anything that would prevent a traditional funeral parlour from running an ad identical to that one, except for the name on it?

Mr Loewen: In fact, in British Columbia because of the playing field as it existed in the early 1970s, we ran many ads similar to this. So really, I do not know of anything that would keep individual funeral homes from running ads similar to that.

Mr Hyndman: Of course, the one area of the wording that would be different is under the caption The Simple Alternative, where there is reference to a nonprofit, public service organization. There would be an implication there that somehow this approach, if you will, was unique and different from others in the funeral service business.

The Chairman: I asked the question because I did not understand your objection to it, because any funeral parlour could run it except for the bottom part where they are describing themselves. Any funeral parlour has a right to do all of the services that are provided, does it not, in Ontario?

Mr Loewen: You are right, except for that one byline, the nonprofit.

The Chairman: Yes, but that is just describing themselves.

Mr Loewen: And that is very misleading and very unfair.

The Chairman: Okay, but the fact remains that they could run the body of the advertisement.

Mr Loewen: The body of the ad could definitely be run by any funeral home, but it is the nonprofit aspect that is very devious, dangerous, misleading and in fact has been very destructive in British Columbia.

The Chairman: I am a little confused on that. Why? Because you are saying they are for-profit?

Mr Loewen: No. It is because of the advantage of promoting yourself as a not-for-profit and misleading the public into thinking that therefore there is an advantage in going to that particular operation, when in actual fact there is no advantage.

In British Columbia, what happened as a result was that a very militant movement evolved where the memorial society, promoting itself as a nonprofit organization, together with the news media, promoted the not-for-profit or nonprofit over against the individual corporations and there was simply no way to compete.

In fact, I had a company in the early 1970s that actively, frequently advertised the lowest prices, but the general public simply could not identify and understand. So the not-for-profit image is one that is simply unfair and unworkable in an ordinary society.

The Chairman: So The Simple Alternative is a profit-making corporation, is it?

Mr Loewen: Legally and technically it is not.

The Chairman: It is not dishonest in the sense that they are describing themselves legally correctly.

Mr Loewen: They are describing themselves legally correctly, I believe, but it is very misleading to the general society.

The Chairman: Is it more misleading than a Tide ad that says new, improved Tide will get the clothes cleaner than any other product?

Mr Loewen: I am sorry. I am getting a little older; I am having a little trouble hearing.

The Chairman: I will not pursue it.

Mr Loewen: Please repeat that question.

The Chairman: I am disturbed or concerned that your objections are based more on aggressive advertising rather than anything being illegal or inappropriate.

Mr Loewen: Our concern on that point is simply this—we felt we should make this trip to Ontario to appear before this committee on that point alone—to remind this committee that one of the most difficult situations in Canada has happened in British Columbia in terms of the relationship between a free enterprise, tax-paying company called First Memorial Funeral Services and a not-for-profit memorial society. As a result, the free enterprise company has become very wealthy. The individual funeral home operators could not compete.

In terms of my understanding of a legislator's interest in making sure there is a fair playing field, I think a fair playing field is in the consumers' interest, so the competitive relationship between the advantage of a nonprofit organization versus a tax-paying corporation is simply unfair. That is the point we wanted to make, and that has been our experience, very much so, at the west coast.

Mr D. R. Cooke: We are getting a lot of very good information from the west coast, let me tell you. We had a fascinating presentation this morning outlining some of the same concerns.

First of all, Mr Hyndman, were you introduced as a former Deputy Minister of Consumer and Corporate Affairs?

Mr Hyndman: Mr Loewen and I had some discussion about this. Both he and I have had the honour of serving in the British Columbia Legislature, although at different terms. For two and a half years I served as Minister of Consumer and Corporate Affairs in the government of W. R. Bennett. At first blush, we thought that none of that was really relevant here today—you have a job to do—and then we scratched our heads and said, "We might as well put it all on the table, because maybe we can help the committee."

1620

Mr D. R. Cooke: I appreciate your doing so. Would you agree that this legislation is being dealt with by the right minister?

Mr Hyndman: That is a very good question. I guess classically the question is whether it should be the Ministry of Health or the Ministry of

Consumer and Commercial Relations. The difficulty with the legislation is that of course there is very much a health or science aspect to it and there is a huge consumer aspect to it.

I am going to give you a very personal view. I think the test should be from the point of view of the individual citizen standing there looking at these vast things called government today. I think we should try to make them as simple as possible for the individual citizen to understand. That would lead me to the personal view that if you could do it in one ministry, I think that would be preferable.

My further personal view would be that today the balance is more heavily toward consumer understanding, especially the way the demographics are going, about bereavement and the time of choice. I would lean to this ministry, in the present understanding of the structure of your government here in Ontario.

Mr Loewen: I would like to speak to that question. Personally, I would like to see it divided, with the professional aspects staying in health, but prearrangement and trust funds—because there are such huge trust funds today—coming under this ministry. We could live with it quite comfortably either way.

I received a note here or at least a reminder, which I was not fully aware of, that under present legislation, a funeral director cannot advertise prices. So in terms to the response to this ad, they cannot advertise prices, where I suppose—I am not sure—a nonprofit organization can.

The Chairman: Even if they are funeral directors?

Mr Loewen: I suppose so. I was handed this note and I am sure you are more aware of this than I am.

The Chairman: I am not sure. Mr Tappenden could perhaps help us out on that.

Mr Tappenden: On a point of clarification, at present the Funeral Services Act, which is administered by the Ministry of Health, prohibits licensed funeral directors from making any reference to price or conditions of sale in advertising. Because a transfer service, such as The Simple Alternative, is not subject to licensing by the Board of Funeral Services, The Simple Alternative has advertised prices.

The proposed statute makes no reference to restricting price advertising, and in fact it is the government's intention to not in any way restrict price advertising as a way of encouraging more information to consumers to make more informed choices.

Mr Loewen: I have difficulty understanding, then, when there is legislation in place, why this organization should be allowed. I imagine possibly that that will be resolved when new legislation comes into effect. However, I find it difficult to see one organization being allowed to fly in the face of the present law.

Mr D. R. Cooke: On page 2, you say, "Although our company operates several cemeteries, our primary emphasis is the funeral service aspect," and then you go on to condemn combinations. It sounds as if we are creating problems for you. Is that not correct?

Mr Loewen: We are comfortable whichever way, if the law comes down. Let me underscore that. However, when we look at Ontario, I believe that we must think of convention. I have struggled very hard in terms of what is the honest and correct answer to that particular question. Personally, I think that the consumer interest has to be protected, very much so. I think that is somewhat synonymous with the public and also the government in its political interest. However, small business also has to be protected because I think that in many ways is the strength of our society.

My question is—and this is how I have been deliberating—whether the public is in any way harmed by the legislation as it stands today. Are they in any way ill affected by not having combinations? I do not think so. I do not know of any serious argument that can be made that the general public benefits through a combination, but I do know that small business will be very seriously affected. Sometimes we are looked at as big business; in actual fact, we are doing our very best to champion small business. So we want to stand on record, at least, to say that we think that the general public, in terms of combination, is not ill affected but small business is seriously ill affected if combinations are allowed.

In other jurisdictions, and I would like to go on the record on this too, we do have a couple of combinations, one in California. In California history and convention is different but Ontario has been served generally very well in terms of good, quality funeral service.

I understand there are some complaints on the cemeteries side that need to be dealt with, but in general it has been very well served. I have frequently used Ontario as a model across Canada for the past dozen years. It has an extremely positive standard and is a good example for the rest of the country.

The Chairman: Mr Cooke, would you allow a short supplementary?

Mr D. R. Cooke: I have a supplementary of my own, if I may. Do you have cemeteries in Ontario?

Mr Loewen: No, we do not.

Mr D. R. Cooke: All right. So it is not causing you problems then?

Mr Loewen: No.

Mr Hyndman: That is a very good question. In jurisdictions where we do have combinations, were the law to change prohibiting them, we would have no objection to that. As you will appreciate, if you have a jurisdiction where there is no prohibition sometimes the market compels you to do that. So at first blush you may be quite correctly saying, "Am I hearing you the right way?" But it is a function of the jurisdiction. If, for example, in California the law were to change, we would have no objection.

Mr D. R. Cooke: What would you do, get rid of your cemeteries?

Mr Hyndman: We would do in that marketplace whatever the law required of us and carry on with no objection.

Miss Martel: I am having some real difficulty figuring out how you can argue both sides of it. Let me lay my cards on the table. This morning we heard very clearly that you are one of three—and I will use the words that

were used this morning—conglomerates operating in the bereavement industry in British Columbia and that in fact there you own both funeral homes and cemeteries.

But you have come in here today and said very clearly on page 5—it cannot get much stronger: "Combinations should be clearly and strongly prohibited. They restrict choice and inevitably lead to tied selling. There is no concrete evidence they provide lower prices." I cannot really, for the life of me, understand why it is working in BC for you, but you would come here today and tell this committee that we should be looking at clear separation. I am having some real difficulties. Maybe you would like to try explaining it to me.

Mr Loewen: That is a good question, but it is very simple. Any legislation has to be defined and brought forward in terms of convention. I do not see this as a moral issue at all. If you are thinking of it as a moral issue, fine, but I do not see it as that at all. I see it as simply good government and good legislation, and who is the legislator really responsible to? Is it simply the private citizen or is it the general public and the small businessperson?

As such, I think it has to be defined in that sense. Legislation, until today, in Ontario has separated the two. If in fact vertical integration were allowed, there would be tremendous dislocation. We as a company are quite comfortable either way. We would benefit either way—we seriously would—but dislocation would take place within the whole funeral service industry,

I would like to also go on record that, in general, the funeral director has not had a champion, has been very misunderstood over the past decade or so. In general, he has served the public well. In general, there have been very few complaints. Unless there is something very beneficial to the general public, I think he is entitled to request that the status quo be upheld.

That is a convention that has existed in Ontario and Ontario people have been well served. Therefore, on record, we would like to support that. In British Columbia, things are totally different. Unfortunately, I am much prouder of funeral service in Ontario, let me tell you, than I am in British Columbia.

Miss Martel: If I am reading your brief correctly, what you are suggesting is a change in the status quo because the status quo now does permit for combinations. Arbor Capital owns cemeteries and funeral homes. What I am getting from here that you are advocating, unless I am reading it wrong, is a clear and total separation among all three, which is not what we have now.

1630

Mr Loewen: No. Thank you for bringing that up. What I have said was vertical integration. To me, there is a difference between—it is pretty hard for one to rationalize that Arbor should not own a funeral home six miles away from its cemetery. In all fairness, I do not think that one could really make that argument. But vertical integration, as I define it, means a cemetery, monument, funeral service company, basically all contained in one operation. I hope I have explained my definition.

Miss Martel: So what you are referring to—I will be very quick—is really one-stop shopping then.

Mr Loewen: That is a good way of putting it.

Mr Farnan: I want to thank my colleague because I think she drew from you, eventually, what we wanted to hear. I think your presentation is wrapped up in such a way that the real end result does not present itself. You do accept the combinations, and I want to ask you a couple of specific questions. What percentage of the bereavement market does Loewen Group hold in British Columbia?

Mr Loewen: First of all, I want to make abundantly clear our definition of combination.

Mr Farnan: I understand clearly your definition, but your definition is something that you can respond to as a corporation which other groups may not be able to respond to. I want to leave that aside.

Mr Loewen: Okay.

Mr Farnan: What percentage of the bereavement—

Mr Loewen: In Vancouver, it is approximately 21 per cent.

Mr Farnan: In the province as a whole?

Mr Loewen: To be honest, I do not have that figure. I am sure it is not any more than that. It may be less, I think. I suspect it would be substantially less than that.

Mr Farnan: What percentage of the bereavement market does your group hold in Ontario, as of this moment?

Mr Loewen: My understanding is that we are involved in 17 out of 600 and about seven per cent of the total funerals per year.

Mr Farnan: In terms of the establishments, what is the percentage?

Mr Loewen: About 17 out of about 600.

Mr Farnan: When the ministry presented a brief to us just a couple of days ago, it was 16. It is 17 today. How many funeral homes are you currently negotiating with at the moment?

Mr Loewen: You are more up to date on our company than I am.

What was that last question please?

Mr Farnan: I am saying that, basically, there is, in my view, a very significant advance within the Ontario market by your corporation. When the ministry made its presentation here, it said you had 12 establishments. My apologies. You suggested 17, which is an advance of five, and I am asking you, how many funeral homes are you negotiating with currently that might be added to your stable within the next six months?

Mr Loewen: I think the 17 is the one that we are now negotiating. I am assuming that. I do not know of any other one we are negotiating with at present.

Let me position what is happening on a little broader base—

Mr Farnan: No. I prefer it if you could answer my questions.

How many establishments did the Loewen Group have in Ontario two years ago?

Mr Loewen: I am sorry. I think it would be about 10 but I am just guessing at this point.

Mr Farnan: I wonder if your associate could comment.

Mr Hyndman: I think in the order of 10.

Mr Farnan: So in a two-year period, there is almost an increase we might say of 100 per cent. We are talking about 17 recognized and perhaps some negotiating going on with other groups. Would that be correct?

Mr Loewen: Right now there is no negotiating going on with other groups.

Mr Farnan: But you are not sure of the 17.

Mr Loewen: That 16 or 17 I am sure of.

Mr Farnan: Maybe 18, 19.

Mr Loewen: No.

Mr Farnan: How would you describe your growth to date in Ontario? It is certainly not static. Within the market, would you describe it as a moderate growth, significant growth, rapid growth?

Mr Loewen: I think this is where it is important for the members of the committee to see what is happening on a global scale. Up to about 10 years ago, we had larger families and there was always somebody to follow in the father's footsteps. Funeral service is a very proud industry, a very proud profession, and families did everything they could to keep their businesses within their own families because they saw it as a very honourable profession.

Today we are living in a different day. With the tax laws we have, with enormous capital costs, with very small families, with the tremendous opportunities of sons and daughters and the mobility of sons and daughters in terms of education and other alternatives, today we are living in an entirely different day. In addition to that, we have some small winds of change blowing across the country. Therefore, a lot of funeral directors who are 50, 60, or 70 years old are looking today for somebody to continue that service. So across Canada and America, there is going to be a rapid change of ownership. We prefer not to see ourselves as an acquisition company; we prefer to see ourselves, and genuinely so, as a succession planning company.

Mr Farnan: Before we get drawn off into an area—I want to keep the questioning focused—the reality of the matter is that you have been described not as part of the solution, but as part of the problem. How you perceive yourself—and I have to commend you on how you present your position—is brilliant.

Mrs Cunningham: And how you answer the questions, by the way, from my point of view.

Mr Farnan: I also have to say that in reality I sat here and was taken in totally and completely.

Miss Martel: I saved you.

Mrs Cunningham: That is really something, for Mr Farnan to be taken in.

Mr Farnan: I thought, this guy should be running for the leadership of the New Democratic Party.

Mr D. R. Cooke: Everyone else is.

Mr Loewen: My mother always says to go by your intuition.

Mr Farnan: At the same time, when it comes to the bottom line I find that your position is so far removed from the general tenor of the paper—

Mrs Cunningham: Never judge a book by its cover.

Mr Farnan: —that indeed were we to follow the presentation, we would be setting up what you believe in, which is a climate for corporate concentration. Despite all the facts, that you say, "No, it really is not what we want," what you are saying is that you can have your cemetery five miles down the road. With the corporation and with the concentration, I present to you, what I consider we will end up with under your vision of the bereavement industry in Ontario is the monopoly system that exists in British Columbia, of which you are part of the problem and of which you will be part of the problem in Ontario should we accept the direction you are taking in this brief. I like you, but I think you are totally off base.

Mr Loewen: Your honour, I did not realize that we had addressed the question of corporate concentration up to this point. I would be happy to speak to corporate concentration. We talked about vertical integration, we talked about a level playing field, we discussed those two issues, but we did not talk about corporate concentration up to this point, I believe. I would be happy to speak to the question of corporate concentration.

Mr Farnan: I think what you did in the brief was, rather than address the problem of the Loewen Group within its situation in BC and its potential, growing situation in Ontario; is you declared war on the nonprofit groups and said: "Hey, here's the problem over here, boys. Don't worry about the Loewen Group, don't worry about Arbor, we're not the problem. It is this nonprofit group over here that's the problem."

But the reality of the matter is that the potential problem for Ontario in terms of all the things you talked about, the small businesses, the funeral directors, all of these things under the direction that is suggested by you and that your group has represented, not in concept but in practical reality—you have become one of a decreasing number of players in British Columbia, and unless there is absolutely strict separation, unless we are given that climate, you will become one of the few players in Ontario and the monopolies will be established.

1640

The Chairman: I hesitate to intervene in a love-in, but we are running way over time. We must give Mr Loewen a chance to respond.

Mr Farnan: My apologies.

Mr Loewen: Your honour, 17 out of 600, 21 per cent of the British Columbia market hardly suggests any kind of concentration. I would like to underscore, rather, what we as a corporation are trying to do. In fact, we are one of very few corporate vehicles which can be and is focused to make sure that good, quality funeral service can carry on in different communities. That is why we try to focus our company as seriously as we do as a succession planning company within a free enterprise market. As such, many of these funeral directors have nobody else to leave the corporate entity to. We strive very hard to focus on that, providing good, ongoing funeral service under this corporate umbrella.

First, I am not sure where that magic percentage is, where suddenly there is a corporate concentration that is not in the public interest. I know certainly that we are very, very far from that point. Second, I want also to underscore that, as witnessed by many funeral homes, through the last 10 or 15 years they really have been managed and operated under tired management.

We as a corporation have worked diligently in terms of upgrading facilities and services, particularly in communities such as Hamilton, Windsor and Toronto, where we have upgraded facilities and professional services quite dramatically. That is our focus. We believe in the funeral profession. I am proud to be a funeral director with licences in Ontario, Manitoba and British Columbia, and we would like to do everything we can to stand up for the profession and for funeral service as we understand it.

The Chairman: Mr Loewen and Mr Hyndman, thank you very much for your presentation.

Mr D. R. Cooke: I have a tiny question to help Mr Farnan here. Did you tell Maclean's magazine on 4 April 1988 that customers tend to pay about 15 per cent more for a packaged funeral after Loewen acquires a funeral home?

Mr Loewen: Almost exactly verbatim. The background to that, however, is this. Just as you gentlemen, I see, do not go to the cheapest clothing store, neither do I. You want to have good service, you want to have personal service, and so do I.

Funeral service cannot be simply a commercial transaction. We have worked hard at trying to be the very best in each community; to offer the best professional services, the best environment, the best facilities; to be priced competitively in every community and, in addition, to offer the best merchandise. As such, the general public is pleased, happy. We believe we combine consumer satisfaction and quality funeral service together with competitive prices. That is why I was not embarrassed to make that statement to Maclean's, because the general public appreciates that.

The Chairman: Would you stop lobbying these soft ones to Mr Loewen?

Mr Hyndman: Mr Chairman, there is one other very important aspect to that, if I could be permitted a supplementary reply. As an example of the kind of thing which the Loewen Group has done in this country, as it has developed

across the provinces its various funeral homes, it has established annual management training seminars in this whole field. Historically, this is an industry of family, mom-and-pop, operations and there has been in Canada virtually little attention paid in the industry to the concept of developing younger people into the bereavement management field as a full-time career.

One thing this company is very proud of is that out of its revenues it is spending the dollars on a cross-country basis to bring all its middle-level managers together, to bring in various experts and specialists, to attempt to upgrade the calibre of the typical manager or person who wants a career in management in this sector. Part of that, obviously, comes from revenue, but it is important, I think, to dispel any suggestion that the Loewen Group acquires a property, jacks the rates and laughs all the way to the bank.

This company, on the record, I think, is making a very real contribution to trying to develop in this country a career future for people in the bereavement sector at the management level.

Mr Farnan: Why do you keep the family names when you take over a company?

Mr Loewen: For one very good reason: A family, let's say, by the name of Anderson has been in a community for three generations.

Mr Farnan: And built up a reputation for quality service.

Mr Loewen: That is right.

Mr Farnan: Now they are no longer in business.

Mr Loewen: Remember I said that we were a succession planning company? Dollars are almost always competitive and equal, but where we try to be different is, we try to take care of the succession personal needs of the Anderson family. You might have difficulty, or the general public might have difficulty, identifying with this, but a service firm, a service personality that has been in a family for three or four generations, they actually feel guilty transferring ownership to some other entity. We work diligently to make sure that they are proud of their successor.

Mr Farnan: Are you not in fact buying the reputation and goodwill that they have built up in the community?

Mr Loewen: Obviously. Absolutely.

Mr Farnan: That is my point.

Mr Loewen: Not only are we buying it, but we are also working diligently. In fact, our credibility and success is based on how we protect that goodwill of that family. If we would change that name to Smith, we would immediately hurt the credibility of that family.

Mr Dietsch: Or Farnan.

The Chairman: On that note, the committee is going to adjourn for the day. We will commence tomorrow morning at 10 am.

The committee adjourned at 1648.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

WEDNESDAY 27 SEPTEMBER 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)
Brown, Michael A. (Algoma-Manitoulin L)
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Martel, Shelley (Sudbury East NDP)
McGuigan, James F. (Essex-Kent L)
Stoner, Norah (Durham West L)
Tatham, Charlie (Oxford L)
Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mr Brown
Cunningham, Dianne E. (London North PC) for Mrs Marland
Farnan, Michael (Cambridge NDP) for Mr Wildman
Haggerty, Ray (Niagara South L) for Mr McGuigan
Pelissero, Harry E. (Lincoln L) for Mr Lipsett

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Federation of Ontario Memorial Societies:

Davie, Pearl, President
Elder, Elly, Legislative Committee

From the Toronto Trust Cemeteries:

Smith, Robert D., President and Chief Executive Officer
Darling, Marcia, Director of Marketing Services
Hockin, Alan B., Trustee

From the Ontario Association of Cemeteries:

Taylor, Paul, Second Vice-President and Chairman, Legislation Committee
Cole, John M., Secretary-Treasurer, Legislation Committee
Vey, Fraser, First Vice-President, Legislation Committee

From the Regional Municipality of Peel:

O'Connor, Patrick, Assistant Regional Solicitor

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 27 September 1989

The committee met at 1006 in room 151.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
(continued)

CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order as we continue our examination of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act. We have a full day of hearings today. We are starting off with the Federation of Ontario Memorial Societies, so if those representatives will come to the presenting table, we can proceed.

As you may know, the committee has agreed that each presentation will be 30 minutes. That can be entirely used up by the people making the presentation, or part of it, and then the balance for an exchange with members of the committee. The next 30 minutes is yours. Would you just be seated, make yourself comfortable and introduce yourselves.

FEDERATION OF ONTARIO MEMORIAL SOCIETIES

Mrs. Davie: I am Pearl Davie, president of the Federation of Ontario Memorial Societies. To my right is David Jackson, a member of our legislation committee, and to my left is Elly Elder, also a member of our legislation committee.

Before addressing the specifics of the acts and regulations, I would like to provide the members of the committee with some background on our organization.

Memorial societies are nonprofit, nonsectarian organizations run by volunteers which offer information and education to members and the general public on the preplanning of simple and dignified funeral arrangements at moderate cost. They have been active in North America since the 1930s and in Ontario since the 1950s, with a national membership of over 200,000. In Ontario, the societies have, for many years, endeavoured to provide the public with information generally unavailable elsewhere on funeral costs, practices and legal requirements. Approximately 50,000 people have joined the 13 societies across the province.

In 1976, the existing Funeral Services Act was drawn up and passed without input from any groups outside the industry, and therefore, in our view, has reflected an industry-protective bias. Partly as a reaction to this situation, a decade ago the societies in Ontario formed the Federation of Ontario Memorial Societies, which we refer to as FOOMS, to represent their point of view to the government and to promote legislative improvement.

Since that time the federation has made several presentations to the Ministry of Health and to the Ministry of Consumer and Commercial Relations with respect to legislation governing the funeral and cemeteries industries, which have promoted the concept of consumer protection and freedom of choice, and expressed concerns over certain provisions of the Funeral Services Act.

The federation is most appreciative of the process of legislative review which has led to the development of the new Funeral Directors and Establishments Act and the revised Cemeteries Act, which this standing committee is now reviewing, and of the government's concern that there be input from consumer groups and others outside the industry. We have been pleased to make submissions which address our concerns at the request of the government and have endeavoured to present a moderate and consumer-oriented view.

Memorial societies are the only consumer group with a special knowledge of and interest in the death care industry, based on many years of dealing with the concerns of members and consumers by our volunteers. Considerable information has been accumulated over many years on how the industry operates and its effect on the bereaved in Ontario. We make no financial gain from our service to the public.

One major change in the direction of the legislation which was most gratifying was the transfer of funeral legislation from the Ministry of Health to the Ministry of Consumer and Commercial Relations, a change which we have always advocated as being the most appropriate for consumer protection.

Our legislative committee has reviewed the two bills a number of times and has gone through them. What I have done here is really just encapsulate the points that are of concern to us. There are other areas in which we do not feel that we need to make any particular comment, so I will refer to them by section number.

Subsections 4(1) and (2): This is for Bill 30. The present system allows for self-regulation, which is the exception in business practice. We feel there is a fundamental conflict of interest in that the provider of goods and services for profit also has some control over the legislation governing the business and can define the parameters of that control. For that reason, we strongly recommend the board be composed of a majority of nonfuneral directors and, further, that at least one or more be members of a memorial society.

Subsection 4(10): The composition of the board would be influential in determining the form and direction of bylaws and therefore should have a majority of nonfuneral directors to ensure there would not be an industry bias.

Sections 8 and 10, with respect to committees: The executive committee should have either a majority of or at least an equal representation by nonfuneral directors due to its powers and discretion in order to ensure there would not be an industry bias. The complaints committee should have either a majority of or at least an equal representation by nonfuneral directors since it would deal with complaints against the industry and should be seen not to have an industry bias.

Clause 16(2)(b), professional misconduct: We feel this is somewhat of a misnomer in that the providing of funeral goods and services for profit is a business, not a profession. However, with respect to unethical conduct, this provision should not be invoked simply to protect the industry against something which the industry would consider a reflection on its image. We

recommend strongly that the regulations provide that the funeral director and establishment must provide price lists and information in the manner prescribed or else that would be considered unethical.

Subsection 19(3): We have had some concerns with the idea of licensing of transfer services and extending that to transfer and removal services licensed by the registrar under this act. As transfer services do not require licensed funeral directors or funeral establishments, therefore licensing by the registrar under this act does not seem to fall within the mandate. It is a concern that since transfer or removal services may operate with a substantially different perspective on the disposition of human remains, there may be a conflict of interest in the regulation and licensing by the funeral industry.

Subsection 19(10): Due to economic factors related to the volume of funerals conducted and costs of maintaining a full funeral establishment, it would seem reasonable that in some areas one funeral director could operate more than one funeral establishment and that only one of the locations would be required to have the full facilities, such as a preparation room, etc, with others operating only as required by a death in the community. We are sure provisions can be made to ensure this arrangement be allowed in the public interest to serve communities with limited populations and to help reduce costs to the funeral purchaser.

Clause 21(2)(c): Any corporation or group purchasing a funeral establishment should be required to provide full disclosure of ownership in all manner possible: by public announcement, in advertisements, on contracts, stationery and signs of all manner and kind identifying the establishment. Disclosure and related ownership should be a matter of public record.

Section 29: While we concur with the section stating a licence is not required with respect to rites and ceremonies traditionally provided at a place of worship, we would take issue with the word "traditionally" since it is subjective and can be defined differently according to various views. Moreover, arrangements may be desired of a nonreligious nature which would not require the services of a licensed director.

Section 33: Memorial societies customarily provide members with considerable information on legal and local requirements for funerals, as well as providing forms for pre-arrangement, handbooks for members and annual newsletters. The pre-arranging is done by the individual member with the funeral establishment chosen, usually from a list of participating funeral homes.

We strongly recommend this portion of the act not be invoked to deter memorial societies, or for that matter others, from providing members with this information and appropriate forms. We agree no payment should be allowed the funeral director or establishment for time spent in discussing pre-arrangement with the public, as such time would be part of the normal cost of doing business, particularly with so many funeral establishments now advocating preplanning in their advertisements.

Section 37: We strongly recommend that information on goods, services and, in particular, prices be available to the general public at the funeral establishment whether or not the consumer is making arrangements or even entering into discussion with staff. Price lists should be displayed in plain view, to be picked up by any person entering the establishment, without any requirement that he or she interact with staff, because this could be very

intimidating. We feel this would not involve a great cost to the business, as once the list was set up, it could be run a few copies at a time as required and the master kept for updating as prices changed.

Section 46: "The Lieutenant Governor in Council may make regulations." Again, we have just touched on those items that we feel are of particular interest to us:

Paragraph 15, with respect to cancellation fee: We had previously recommended a sliding scale be used to determine such a fee based on the cost of the prepaid contract with a ceiling of \$150 and felt the client should receive all accrued interest to the time the contract is cancelled.

Paragraph 16: The wording of the terms of the contract would of course provide for consideration of paragraph 15.

Paragraph 21: We take the view that any competent person could take care of most of the details with respect to funeral arrangements. We also take the view any person should be free to make arrangements, if requested to do so by the bereaved, or in advance of need by the deceased, without requiring direction by a funeral director. This would mean any person outside the business. However, we also feel many of the details within a funeral establishment could be handled by competent and trained staff.

Paragraph 24: This was a question with respect to fees. In the past, we understood the fees were set in order to cover the costs of administering expenses and salaries of registrar and inspectors and we wonder if these fees would now be sufficient and, if not, what are the other sources of revenue and where they are referred to in the act or regulations.

Paragraph 31: Advertising, particularly of prices, should not be prohibited, as this is a disadvantage to the consumer who cannot comparison shop as is done in all other businesses. The display of funeral goods should not be too restricted as there is nothing inherently offensive in such goods. The industry has maintained a mystique relating to funeral goods and services which has resulted in restriction of freedom of choice for the public.

Paragraph 35: Failure to provide the public with ready access to price information or full disclosure of ownership or of access to alternatives, if desired, would demonstrate a lack of integrity.

Paragraph 36: Funeral supplies should be obtainable wherever the public wishes to buy them and should not be restricted to funeral establishments. Coffins, caskets and containers could be made and sold by cabinet makers or carpenters and containers for cremains by artisans. The choice of where to purchase such merchandise should be the consumer's; restriction appears to be for the convenience and profit of the industry and limits the creativity of the general public. However, with respect to display within a funeral establishment, it is not sufficient to require only a variety of cases; a display must include a range from the lowest-price container through those of moderate cost.

Paragraph 37: Minimum requirements for funeral services or goods should be determined by the person purchasing such goods and services or prearranging for them. It should not be the decision of the industry as to what the public should be able to select as a minimum. Many consumers desire alternatives to that which the industry deems as the traditional or full-service funeral. The word "traditional" is value-laden and its use may act to pressure consumers to

arrange the more expensive full-service funeral when a simpler alternative may be more desirable and suitable.

Our conclusion on Bill 30 is that it is the concern of the federation that the Funeral Directors and Establishments Act, and particularly any regulations related to it, be set forth in such a manner as to enhance the position of the consumer in obtaining information and making arrangements of choice rather than protecting the industry.

Whenever the possibility arises that regulations may limit the consumer's freedom of information or choice, great care must be exercised to prevent that misdirection.

The federation would hope that the establishing of the proposed advisory committee for the afterdeath industry would aid in providing the public with unbiased information on all aspects of death care in a readily accessible form.

Re Bill 31, An Act to revise the Cemeteries Act:

Subsections 23(1) and (3): It is a concern that the act may serve to restrict the rights of the interment rights holder to sell the plot or plots to whomever he or she wishes and will require the interment rights holder to accept whatever price is determined in the prescribed manner. While there may or may not be a market for the resale of plots, the act should not restrict the rights of the public in this situation, provided the new purchaser is given full disclosure of conditions relative to that contract.

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Subsection 23(8): If interment rights have been exercised and the body subsequently removed, it would seem the plot should revert to unused status and could be resold. There should be some provision for this admittedly unusual circumstance.

Section 25: The federation is generally pleased with the consumer protection inherent in this section.

Section 26: Price information should be available to the general public whether or not the consumer is making arrangements or even entering into discussion with staff. Price lists should be displayed in plain view to be picked up by any person entering the premises without any requirement that he or she interact with the staff. Information as to costs of opening and closing graves and policy as to interment of cremains or extended use of plots should be provided in the same manner.

Section 35: The federation is generally pleased with the consumer protection inherent in the trust fund section.

Section 47: This is one that really has our interest and concern. We refer to the definition of "human remains" under subsection 1(e) which includes a cremated human body. We feel that this restriction on the disposal of cremated remains is unwarranted. There is no reason to restrict the interment of cremated remains to a licensed cemetery.

Many people choose cremation because of the simplicity of disposition of cremated remains, which are fully biodegradable and offer no offence to the environment. Some choose to scatter the cremated remains in a manner respecting the previously expressed wishes of the deceased or which honours or

recognizes the memory of the deceased person. Others choose to inter the cremated remains in a favoured place, which is often not a licensed cemetery. This should remain the choice of survivors and should not be restricted in any way.

While a dead human body may require some protection of this sort to avoid its use as a skeleton in an undignified manner, cremated remains do not. It is very difficult to imagine any such circumstances, even if the remains were in a container. We would strongly urge that this restriction not be enforced.

Section 51: This refers again to the definition of "human remains." Restrictions should not be applied to cremated remains.

Subsection 56(3): The right to refuse to cremate any human remains could, in some circumstances, be used improperly. We feel there should be some provision for appeal against the owner's decision and some requirement that it be made on reasonable grounds. It would appear that this refusal is usually made on the basis of family disputes over whether or not cremation should take place. However, we feel the act should provide for other situations.

Subsection 74(1): It would appear from the way it reads that if the owner of land containing an irregular burial site did not know of the interments and discovered them in the course of excavation or other use, he would be responsible for the costs involved in interring those remains in a cemetery. This does not seem a reasonable requirement. We understand there are many exceptions in the case of aboriginal persons remains, victims of homicide, accidental death, etc, but these are not indicated in this portion of the act.

Subsection 76(1): "The Lieutenant Governor in Council may make regulations":

Paragraph 2: Again we have a question with respect to the fees charged and the expenses of the board and salaries of registrars under the act. Are they sufficient and, if not, what are the other sources of revenue?

Paragraph 7: We would hope this regulation would allow for situations such as interment of cremated remains and the burial of two persons in a single plot to save use of land.

Paragraph 35: We would hope this regulation would not restrict the interment of cremated remains to licensed cemeteries.

Paragraph 44: We would hope that this regulation would ensure disclosure of related costs: opening, closing, interring cremated remains, etc.

Subsection 81(1), with regard to expropriation: This section seems redundant as the Municipal Act allows for such action on the part of a municipality.

Section 88, with regard to section 1 of the Toronto General Burying Grounds Act: The wording of this substitution is very unclear, although we understand it allows the trustees of the Toronto General Burying Grounds to extend its mandate into areas outside Toronto. The federation has some concerns in that financial statements of nonprofit cemeteries are not usually available to the public.

Our conclusion re Bill 31 is that it is again the concern of the

federation that the Cemeteries Act, 1989, particularly any regulations related to it, be set forth in such a manner as to enhance the position of the consumer in obtaining information and making arrangements of choice.

Once again, we express appreciation for the open and concerned manner in which the process of reviewing death care legislation has been conducted by the government and for the opportunity to express our concerns and offer recommendations. You will note, attached to the back of this presentation, two pages related to our concerns: an open letter which was sent to all cabinet ministers in January this year, and a letter to all MPPs in May 1988, which touched particularly on some of the things I have mentioned in the submission.

The Chairman: A number of members have indicated an interest in asking you some questions.

Mr Tatham: On page 5, section 47: "includes a cremated human body." Do you know of any jurisdiction where this type of activity is taking place now?

Mrs Davie: With respect to the cremated remains? I am afraid I do not know of any jurisdiction. Do you, Elly?

Mrs Elder: No. We have been telling our members that there is no restriction except they must not put cremated remains on private property or a cemetery property, but there is nothing we have been able to find that prevents them from burying or scattering the cremated remains at their cottage, for instance; that is a common request people make, so it has been done.

Mrs Davie: There may be a concern in that if it is suggested that the cremated remains in a container not be buried outside a licensed cemetery, we feel there would be a great rush on the sale of containers. As it is now, the container the person receives cremains in, unless they request otherwise, is a very simple plastic or wax container. We feel there will be a push to sell an urn or container box of some kind, semi-permanent; then interment or installation in a columbarium would be the next step. That is a real concern of ours.

Mr Tatham: It would be all right to scatter the remains but not to package it and put it into a particular spot. Is that it?

Mrs Davie: I feel that burying them almost anywhere is appropriate, provided you have the right to do so. They are, after all, pulverized bone ash; they are not bodies, skeletons, whatever. If they were buried in the wooden or wax container that some crematoria provide, that would biodegrade in a very short time.

I think one of the concerns was that at some point in the future, if they were buried on a cottage lot and dug up in a container, they needed protection from that. All that would be in a container would be bone ash, which would mean very little to anybody, and could not be, in my opinion, used in an offensive manner. I feel that the restriction is a restriction on the survivors rather than a protection for the cremated remains.

Mr Tatham: Suppose you had a family of five and you wanted to do this for five. Would that be all right?

Mrs Davie: I would think so. It is a very small container. My sister

died this spring very unexpectedly. Her remains were put in a container about this size, a very nice wooden container, which was present at a memorial service. At a subsequent time, my nephew and brother-in-law took the cremains and scattered the ashes at the headwaters of Marble Canyon in Alberta, as she had expressed a wish. Even if it is in a container, scattering may be done later. It is such a small quantity of material that I cannot see that it would represent any kind of offence to a property or in any other way.

Mr Wiseman: This is a correction. I had a lot to do with the former act we were working under in 1976. You mentioned it was carried out without any correspondence with other groups, other than the funeral directors. I go over to 36 on page 4, at the end, where you say that they should have prices from the cheapest to the dearest. That was a recommendation, I believe, of the president of the day from northern Ontario, which was carried out; because sometimes they had two viewing rooms, and the funeral director would prejudge whether you had lots of money or not so much money and they would take you into one room or the other. We put it in the act that they had to go right from the cheapest to the dearest within one room, that they could not prejudge how much you might want to spend.

That is just one recommendation that the people of the day made and it was accepted. I can think of many others, as we go through—

Mrs Davie: Perhaps I should have said any "formal"—there was no formal process for input.

Mr Wiseman: There was not a hearing such as we have today, but there were still scads of presentations and phone calls and meetings.

Mrs Davie: In 1976?

Mr Wiseman: Yes, because I was a long time getting to the part where we ended up taking the legislation into the House, and many meetings with the lawyer of the day, Cezarina Wysocki, in the Ministry of Health. I just did not want that to go by. That same recommendation was made in the last part of 36 that is incorporated into the act as it stands today.

Mrs Davie: Mrs Elder would like to respond.

Mrs Elder: I was very much involved with that act, and we did not find out about it until first reading had already taken place. We had been told that we were going to be notified, but we were not. It was a terrible rush at the end. I do not remember attending any hearings. I was down in the House and advising the person who spoke for us while second reading was going on. We had very little opportunity for input to that one.

Mr Wiseman: It was not sent out to committee, as I said, like we are in now, but there was certainly lots of communications within the ministry to me and to officials that were handling it in there. That is the result, the one I was just mentioning, that you put in this recommendation 36; the last part in 36 was almost identical to the presentations that were made to me at that time.

Mrs Elder: But it is my understanding, from my experience, that the funeral directors are still doing that. They might not have a separate room, but they have a curtain or something across, where they will bring in the lowest priced, what we call our type B casket; that is still being done.

Mr Wiseman: I was not aware of that.

The Chairman: I assume that "cremains" is the word for cremated remains.

Mrs Davie: That is the industry buzzword for cremated remains. There is really "nuchword," as my children used to say: no such word.

Mr Haggerty: I want to direct a question to the president. In section 37, I believe, you talked about full disclosure of costs related to funeral expenses. A witness who appeared before the committee yesterday had an attachment which said: "Finally...there is a simple alternative to the funeral. A simple, low-cost, dignified alternative to traditional funeral service is now available. A fee of \$429 will provide for: a meeting with the family to complete the final arrangements...."

Is that the actual cost? It says here, "Administered by Canadian Memorial Services."

Mrs Davie: The \$429 would involve, I understand, the container and the services attached to removing the body from the place of death, taking it to the crematorium. It would not involve the cost of the cremation, which I think is \$170-plus.

Mrs Elder: It is \$160 to \$190 in Toronto.

Mrs Davie: Yes, in that range. There is a coroner's certificate and there may be a couple of other expenditures over and above that. But basically that would be the cost. What is the price range in Toronto right now?

Mrs Elder: It starts at \$435 at the Toronto Memorial Society for a similar service, with our lowest-priced funeral director; but that price of course does not include cremation or burial costs. That is a separate amount.

Mr Haggerty: Would you say that might be misleading to the public, the \$429, and then you would walk into your society member and he would say, "This is going to cost you maybe another \$400 to \$600 more"?

Mrs Davie: And it could, if you are talking about opening and closing an existing grave site. It is difficult, because you have the difference there, but if you are going to a funeral establishment, it would not include the cost of the cremation, opening and closing or any of that in its quotes.

Mrs Elder: In the society, we make sure that people know from before they join the society that that is only for the funeral director's cost, because we cannot quote; whether they are going to have cremation, and the cost of the grave depends on the location and so on. We have to have the two amounts, one for the funeral director—

Mr Haggerty: I know a local funeral director in my area. He tells me that normally when you walk in there in case of a death within the family, they usually give you the cost right there, what it will cost you.

Mrs Elder: Not all funeral directors do that.

Mrs Davie : No. He must be a very nice person.

The Chairman: What is the most abbreviated funeral possible?

Mrs Elder: This is the one that was just mentioned. A body is picked up by the funeral director or the transfer service. They have the legal papers ready, they supply an unlined container—it is a plywood box usually—and they take the body to the crematorium. That is the very minimum. That is the \$429 that was just mentioned, plus the cost of cremation.

The Chairman: So you go directly to the crematorium?

Mrs Elder: No, it cannot. The body has to be stored for 48 hours before cremation can take place, so it has to be stored somewhere. A crematorium does not hold the body.

Mrs Davie : Some do.

The Chairman: Thank you very much for a very thorough brief.

The next presentation is from the Toronto Trust Cemeteries. For members of the committee, this is 20 and 20A, the smaller "speaking notes" one and the more substantial brief. Ladies and gentlemen, welcome to the committee. The next half-hour is yours.

TORONTO TRUST CEMETERIES

Mr Smith: I am Robert Smith, president of the Toronto General Burying Grounds, and I would like to introduce my two colleagues with me. On my right is Marcia Darling, our director of marketing services, and on my left is Alan Hockin. Mr Hockin is a trustee of our organization and chairman of our investment committee.

Toronto Trust Cemeteries appreciates the opportunity of meeting with you today and of sharing our views with you on two important pieces of legislation. As our time is limited, our remarks will highlight the main points covered in our written submission. In today's presentation, I will also be sharing with you the results of a poll of public opinion conducted in Ontario on many of the issues which this committee is reviewing. This poll was commissioned by Toronto Trust Cemeteries and conducted for us by Decima Research Ltd.

I should begin by telling you something about our organization, Toronto Trust Cemeteries. We were established in 1826 by a group of citizens in the town of York who sought to found a public cemetery that did not discriminate on the basis of religion. From this modest beginning some 163 years ago, we have become the largest cemetery organization in Ontario. We operate six crematoriums, five mausoleums and nine cemeteries in and around Metropolitan Toronto. More important, we come into contact with over 20,000 families annually who need our services.

There are two important and unique aspects of the Toronto Trust Cemeteries operation which I would like to stress, as these are central to our appearance here today.

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First, finances: Ours is a not-for-profit organization. We have never received any form of government funds nor do we intend to. We are motivated solely by a mission to provide efficient, ethical and low-cost service to the public.

Our second unique characteristic is about people. We are constantly changing to meet the needs of an ever-changing Ontario, a community which has become multicultural and multifaith in makeup. I hardly need tell a committee of parliamentarians the degree to which Ontario's population now encompasses a rich mixture of religious and ethnocultural traditions. Toronto Trust Cemeteries was the first cemetery organization to offer a range of different burial rites to accommodate the needs of many different cultures. From our beginnings, we have recognized that people of different national and religious backgrounds have traditions surrounding death which are as important—no, more important—to them than their history and linguistic heritage.

Unfortunately, there are some important aspects of the proposed legislation that could restrict our ability to respond to the existing and future needs of the people of Ontario. My colleagues and I are here today because we have several serious concerns with Bill 30 and Bill 31.

We at Toronto Trust Cemeteries strongly believe that reasonable government regulation is necessary and desirable to ensure that the consumer's best interests are safeguarded. We support the government's stated intention of bringing modern reform to the bereavement industry.

Toronto Trust Cemeteries has always operated according to a code that encompasses many of the principles that will be enshrined in the new legislation. Protection of the public must be first and foremost. There are several respects, however, in which we believe the legislation is flawed.

The new legislation would prohibit the operation of combinations, and this move is detrimental to the public. What are combinations in the bereavement industry? Combinations simply allow for a direct operational connection between cemeteries and funeral establishments. Combinations could provide the public with the option of purchasing two or more services from one organization which it must now purchase from separate organizations at greater cost and inconvenience. In other words, we believe the option of one-stop shopping should be available in our province.

The issue is simply freedom of choice. Immediately after the death of a loved one, upset and emotionally drained people are overwhelmed by the long list of bewildering decisions and procedures that attend a funeral and interment. Combination services offer convenience by allowing families to get, from one source, all the information they need and, after comparing, to choose and customize all funeral and interment arrangements at one location. In addition, dealing with one organization could often result in considerable cost savings. Combined services will provide people the opportunity of greater control of a complicated, unfamiliar and upsetting process.

I want you to remember that combination services would only be an additional option for the consumer. We are trying to expand people's freedom of choice.

If we look at some of the facts, the Ontario public strongly supports combined services. Many will definitely use such services if they are available. As I mentioned earlier, Toronto Trust Cemeteries commissioned a public opinion poll on this issue, and to our knowledge this is the only scientific poll to be taken on the subject.

The Decima study, conducted in April 1989, indicates that the public wants combinations. In particular, 60 per cent of the people of this province

say that they support legislative changes to allow combined services and 61 per cent feel that combined services are a good idea, provided consumers are not restricted in their choices. Public opinion is clear: combined services are an option the people of Ontario want.

Aside from Prince Edward Island, Ontario is the only province which does not allow combinations and Ontario has the highest average funeral prices in Canada. In British Columbia, where they have had combinations for years, the average funeral costs are just over half what the people of our province have to bear.

We believe that the introduction of combined services would increase competition simply by increasing the range of options to the consumer and by countering the ever-increasing concentration of ownership of funeral homes across the province. Today, sadly the family name over the funeral home door usually disguises the ownership by a large profit-driven conglomerate. In contrast, we believe that the introduction of combined services would increase competition simply by increasing the range of options to the consumer. One-stop shopping will result in greater competition.

Some of you, I am sure, have heard of the red herring called tied selling. Tied selling is the term used to describe the selling of one service on the condition that another is also purchased. The simple fact is that the public is already well protected from tied selling under the Competition Act. We believe that competition is good for the public and our proposals would increase competition. More importantly, people want the freedom to make the choice themselves.

The other issue that I will address causes us and cemeteries collectively significant concern, and that is the investment of trust funds. This is covered by section 37 of the new Cemeteries Act. A cemetery is unlike any other enterprise because it has a unique obligation to be maintained for ever out of the income produced by its perpetual care fund. The perpetual care obligation can only be carried out if two conditions are met: First, sufficient money must be set aside for the fund; second, the capital of the fund must be invested to stay ahead of inflation. Nothing is more threatened by inflation than the care and maintenance of cemeteries.

Toronto Trust Cemeteries has been contributing to a perpetual care fund since 1876, 80 years before such contributions became a legislated requirement. We have also continued to put more into the fund than is required by law to ensure the fund remains healthy so that ultimately our cemeteries will not become a charge on the public.

In 1954, Toronto Trust was exempted from the requirement under the Cemeteries Act to invest funds according to the Trustee Act. Our investment decisions are governed by the Toronto General Burying Grounds Act. The proposed requirement that Toronto Trust's investment decisions be governed by the Trustee Act, which is frankly an antiquated piece of legislation when it comes to investment, will limit considerably the growth of our perpetual care fund which, I might add, has had an extraordinarily strong record.

If the legislation before you is not amended in this regard, our investment in corporate equities will be restricted to 35 per cent. Yet, it is from these equities that our fund can achieve its greatest growth. It is our view that the investment guidelines being proposed are unnecessarily restrictive given the nature of our liabilities.

With this in mind, we recommend that investment of trust funds be governed by the broader provisions spelled out in the Pension Benefits Act. This is a much more up-to-date piece of legislation which is more in tune with the realities of the modern investment market. Surely if the provisions of the Pension Benefits Act are good enough to govern the investment decisions for the future retirement needs of millions of individual citizens, they are good enough for regulating the investment funds for the care and maintenance of cemeteries.

Consider this: We have a strong track record in maximizing the return on our investment. This allows us to take complete financial responsibility for our properties. If we lose the ability to do so and these properties become financial liabilities, you know who ultimately loses—it is the municipal taxpayer.

Under the laws of our province, failed cemeteries become the responsibility of the municipalities. Surely it is preferable that the legislation be changed to ensure that cemeteries continue to meet their unique responsibilities at no cost to the tax-paying public.

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Surely it makes more sense to allow operators of cemeteries the flexibility to meet changing and complex consumer needs in a multicultural Ontario. This should include offering appropriate services such as one-stop shopping. Surely it makes more sense to allow cemeteries the latitude to invest trust funds wisely and with an eye to reasonable return. If we can do this, we will continue to have the economic health to operate our facilities into the future and the ultimate beneficiary is the public. Otherwise, we will become a burden to the very people who we were intended to serve.

We sincerely hope that you will give serious consideration to the changes we are proposing. The amendments we have put forward will result in much stronger legislation which will better serve the people of Ontario. I thank you for your attention. My colleagues and I would be pleased to respond to any questions that you might have.

The Chairman: Thank you. I have just one question before I open it up to the members. On page 8 of your brief, you state that, "In British Columbia, where they have had combinations for years, the average funeral costs are just over half what the people of our province have to bear." You do not quite say it, but there is an implication there that the reason they are only half the price in BC is because of combinations. Is that what you directly want to tell us?

Mr. Smith: Not entirely. Combinations are a factor in the marketplace. In addition, in British Columbia the consumer movement in the funeral industry has been much more forceful.

The Chairman: Okay, thank you.

Mr. Farnan: I am going to just ask you a question and leave you some time to perhaps make your case again because it is the area of separation that I am interested in and hearing you argue the point. Basically, we have senior citizen groups and consumer groups telling us separation is a protection that will benefit the consumer. We have the British Columbia experience. Just yesterday we had the owner/president of the Loewen Group accept the fact that the cost of services had increased 15 per cent, with his group taking over an

individual operation.

On the other side, I think it is clear that those individuals or those corporations that would appear to benefit by concentrations are saying, "Let's go soft on the separation." Would you like to argue the case briefly for me because clearly the consumers are saying there is greater protection in separation?

Mr Smith: I am going to ask Miss Darling to address that question because she has had more experience on the consumer research.

Miss Darling: On the contrary, Mr Farnan, I believe consumers have said very clearly that they think combinations is an option that they would like to have. That is certainly what our research indicated in April. We do not know of any other research that has been conducted on this subject, particularly by the groups to which you referred.

With respect to Mr Loewen's comment about his prices increasing—in Ontario, so far Mr Loewen has simply bought funeral homes and I do not know whether you could attribute the price increase to which he referred to the existence of combinations in British Columbia or if it would be also attributable to the type of ownership that is buying these funeral homes. I do not know. I do not think it can be attributed to the one factor.

The question Mr Haggerty had for Mrs Davie regarding the ad that he read and the confusion that might cause a consumer in thinking, "Okay, the \$429, or whatever the price is, is going to take care of everything," and then they find that the service provider is going to have to make all these additional charges—that is something that is brought about by the enforced separation of the services. Again, we are not at all saying that combinations are something that should be the only option, but rather that consumers should have the right to choose whether they want to deal with one person and take advantage of the particular convenience and whatever other services they might offer them, or they might want to go to other service providers. It should be left up to the people to choose.

Mr Farnan: I do not know whether some people would look upon your polling survey in the same manner as Conrad Black taking a survey as to whether a corporation should have the right to union funds or pension funds. There is a tendency—admittedly, you have a legitimate research foundation. Did the questions that were devised by Decima—first, obviously, you did not provide the committee with the questions.

Miss Darling: We would be happy to do so, Mr Farnan.

Mr Farnan: Yes, that is important. The other question I would ask is, were the questions presented to the senior citizens and consumers groups in Canada, etc, prior to the poll being taken?

Miss Darling: No, they were not. They were developed by Decima Research and were presented in a fashion that they normally are, where you are given options and they alter the order in which the option is given to the person being polled so that there is not going to be any weighting of the results based on what you ask first and what you ask last. They went about it with that approach. The sample and the distribution of the sample that they use is precisely the same as they use for Ontario wide polls commissioned by the provincial political parties.

Mr Farnan: Of course, as you said, the unfortunate situation is that you are not aware of any other information and I suspect that the consumer groups of Canada or Ontario will probably not put too much weight on a poll commissioned by a group that is in fact on record as being in favour of integration of services as opposed to separation.

Miss Darling: We just want to make the point once again, for emphasis, that we are a not-for-profit organization. This is not something where I see any benefit coming to the organization. What we are trying to speak for here is for the benefit of the consumer. I know that the Consumers' Association of Canada has those same interests, but, as I say, we are the only people who I know of who have gone to an independent organization to conduct consumer research.

Mr Farnan: The question was asked so that you could put your views on the record.

Mr Haggerty: Looking at your document from this morning, you talk about the trust part of your operations. How much money is in your present trust fund?

Mr Smith: The perpetual care fund—I better defer to Mr Hockin.

Mr Hockin: On a market valuation, it is around \$55 million to \$65 million, in the perpetual care fund, that is.

Mr Haggerty: You were established in 1826. Do you have sufficient land now within the Metropolitan Toronto area for future burial sites?

Mr Smith: Yes, sir.

Mr Haggerty: How much land would you have available?

Mr Smith: Collectively, approximately 1,500 acres.

Mr Haggerty: How many burial sites would you get on an acre?

Mr Smith: The rule of thumb would be about 900 grave sites. Quite frequently, the grave sites are utilized for two interments.

Mr Haggerty: How many?

Mr Smith: It is 900 grave sites.

Mr Haggerty: That is per acre?

Mr Smith: Yes, sir. We have approximately 700,000 people buried in our cemeteries at this point in time.

Mr Haggerty: Your operations do not extend beyond the regional municipality of Metro?

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Mr Smith: Yes, they do, to the regional municipalities of Halton, Peel, York and Durham.

Mr Haggerty: You cover that area?

Mr Smith: Yes.

Mr Haggerty: Looking at that, you could pretty well control the market in Metro Toronto, could you not, when you talk about one-stop shopping? Is that true, that if you control the market in the area you would reduce competition, in a sense?

Mr Smith: No, I do not believe we would. It is not proven or a given in any marketplace where this service has been offered to the public.

Mr Haggerty: What is the average cost of your burial place and, if you are in a combination, the whole business of burial itself?

Mr Smith: I cannot answer that. We are not in a combination situation.

Mr Haggerty: Do you have chapels on your present grounds?

Mr Smith: Almost all of the cemeteries have chapels, and all of the crematories certainly do.

Mr Haggerty: Are they assessed?

Mr Smith: The cemetery properties, no.

Mr Haggerty: In other words, you are competing with the free market, you might say. A funeral director who has an establishment pays taxes on it, even for the chapel. Am I correct in that?

Mr Smith: That is correct. We would anticipate that if we were to enter the funeral business on the same basis on which it is currently offered to the community, we would play by the same rules. I might add that it is not our intent to enter the funeral industry on the basis on which it is currently offered. Our research, which we have spoken of earlier, has identified to us that there are a growing number of people in Ontario who do not perceive a great deal of value from what the—for want of a better word—traditional funeral community is providing. There are a lot of people out there who seek simple, low-cost, convenient, meaningful commemoration. This is our entire focus.

Mr Haggerty: But you pretty well have control of all the burial sites, though?

Mr Smith: No.

Mr Haggerty: You would have a large portion of it, though, would you not?

Mr Smith: In Metropolitan Toronto we would handle about 60 per cent of the burials and cremations that occur in that area; in the other regions where we have facilities it is much less than that.

Mr Haggerty: Is your price range the same as in other smaller communities or higher?

Mr Smith: Well, we have conducted some price surveys this year.

Miss Darling: Around the areas where we have cemeteries we are about

average in prices for burial rites.

Mr Haggerty: What is the average?

Miss Darling: Just as a number I could use as a reference, on average in Metro a grave will cost \$700, roughly in that area, for the burial rites. That would be one grave. There are all sorts of options. If you want a large lot, then it is going to be more expensive. If you want a burial space for cremated remains, it would be much less expensive. A charge you would have on top of that would be the fee for interment. Also, if you wanted a marker on the grave, that would be additional. We do not sell anything as a package. Everything is up to people to choose what they want.

Mr Haggerty: The intent of the bill is to maintain a certain degree of competition in Ontario. I am looking at your word that you are saying that, if you have a combination, the competition should be greater and the cost should be reduced.

The Chairman: Mr Haggerty, we are quickly running out of time and Mr Wiseman has not had a chance yet.

Mr Wiseman: Mike has asked many of the questions I was going to ask. You mentioned your survey is unlike a political survey. I wonder if it was aimed at an older population. Just how many people the organization approached, and the ages of those people, would be very interesting to me.

Miss Darling: I would certainly be happy to give you a breakdown of ages. It was all ages of adults; we did not ask children. We were not looking particularly at a seniors population at all. The summary of the results is in one of the appendices, I think it was appendix E, of the brief we gave you. At the top it indicates how many people were surveyed.

Mr Wiseman: Being nonprofit and controlling 60 per cent of the cemeteries in the Toronto area—this goes with what Mr Haggerty was saying—you are average with the rest. You are not below because you are a nonprofit organization. You are not selling them cheaper like the one we heard about yesterday. They were probably one of the most inexpensive ones, at around \$525 or \$600 or something for a lot at the Jewish burial grounds, as I think we were told yesterday.

Miss Darling: The least expensive cemeteries tend to be the smaller cemeteries throughout the province. Usually, they are associated with churches.

Mr Wiseman: I just mean in Metro, the other 40 per cent. As a businessman, I would think that being nonprofit and everything, perhaps you would be selling at a lower level than somebody who was in it for a profit, because you do not pay taxes, as Mr Haggerty said, and other things like that.

Mr Smith: Prices are based on cost recovery. We set our prices. I would suggest to you that the market forces cause others to respond accordingly. When you price land, if you are looking to the future and recognizing that this is your inventory to serve the public, cost recovery in terms of cemetery burial rights has to be based on the cost to replace that land, not the historic cost of the land.

Mr Wiseman: I was wondering about the \$55 million to \$60 million that the gentleman to your left mentioned was in the perpetual care fund. I thought maybe Mr Haggerty would ask the next question: What do you have in

your general fund to accumulate all this 1,500 acres of land? With what is out there being nonprofit, I suppose you have to put out a profit and loss statement on what other reserves you have. How big are they? Are they quite large?

Mr Hockin: They are about \$10 million. They have largely arisen out of the fact that the trustees over the years have been very far-sighted and have acquired farms on the outskirts where they thought the city was growing. Sometimes those farms have been expropriated for a main highway or for a hydro corridor, and sometimes we have been able to get money back from that which we then have used to buy farther out again. It really comes about as much in that way as any.

Let me come back to the question as to--

Mr Wiseman: If I could just ask you a question there, are you in speculation on that if you buy it for \$1 million and sell it for--

The Chairman: Mr Wiseman, I do not want--

Mr Hockin: We are not speculating.

The Chairman: We are considerably over time already.

Mr Wiseman: The nonprofit part scares me sometimes.

Mr Hockin: Could I answer one question here in particular; that is, why our prices are not lower than the commercial prices. I think you go back to the difference in the way in which we set aside money for perpetual care. We set aside considerably more than is required under the law. For example, in the case of burial rites of interred full remains, it is a difference between 50 per cent and 35 per cent of the sale price, so it is a big amount. We do that because our experience, as Bob Smith has said, is that the cost of the physical maintenance of this ground in perpetuity is something we just have to keep in our minds all the time. We realize that we have to put aside much more money to enable us to carry out those responsibilities and avoid ending up on the municipal taxpayers' rolls.

The Chairman: Mr Smith, Mr Hockin and Miss Darling, I wish we had more time because other members would like to have an exchange with you, but there is an agreement for half an hour for each presentation. We are over that. Thank you very much.

Mr Dietsch: Perhaps the gentlemen and lady would submit to the committee their policy on repurchase of lots.

Miss Darling: Would you like that in writing?

The Chairman: Yes.

Miss Darling: Certainly.

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The Chairman: The next presentation is from the Ontario Association of Cemeteries. If those people are here, would they have a seat. Welcome to the committee, gentlemen. If you would introduce yourselves for our benefit and for the benefit of Hansard, it would be helpful.

ONTARIO ASSOCIATION OF CEMETERIES

Mr Taylor: My name is Paul Taylor. I am the second vice-president of the Ontario Association of Cemeteries. I am the chairman of the legislation committee. On my left is Fraser Vey. He is the first vice-president of the Ontario Association of Cemeteries and is also on the legislation committee. On my extreme right is Greg Kett. He is on the legislation committee. On my immediate right is John Cole. He is secretary-treasurer of the Ontario Association of Cemeteries and he is also on the legislation committee.

We thank you for allowing us to present the view of the Ontario Association of Cemeteries today. We have given an outline to you of some of our concerns and I will read a brief for your convenience.

The Ontario Association of Cemeteries has been in existence in Ontario since 1913. Its membership is comprised of 200 cemetery members who operate or oversee nearly 500 cemeteries in this province. As well, there is an active membership of 45 supplier members representing provincial, national and international businesses who supply goods and services to the cemetery industry.

The members of this association represent the wide variety of cemetery operations that exists in Ontario at this time: religious, nonprofit, commercial, municipal and combinations of the aforementioned. As well, there exists a wide diversity in size of operation, from the small cemetery with one or two interments per year to the industry giants that oversee numerous cemeteries across the continent. These are the factors that make our association unique and the strongest such association in Canada.

The association is governed by the board of directors and among its standing committees, as set forth in the constitution of the Ontario Association of Cemeteries, is the legislation committee.

Entrenched in the constitution are the aims and objectives of the association, which state in part, "...to foster and encourage such legislation as may be necessary for the betterment of the industry consistent with high ethical standards and to co-operate with the government in the implementation of such legislation."

To this end, the legislation committee has maintained an ongoing dialogue with the various ministries of the province of Ontario for many years. At least two of our present legislation committee members have served the association, through this committee, for over 15 years. The makeup of the committee is such that each type of cemetery operation is represented to ensure a full comprehension of the concerns of all members of the Ontario Association of Cemeteries.

The Ontario Association of Cemeteries applauds the efforts of various officials of the ministry in bringing about long-awaited changes in the legislation that governs our industry. As well, we wish to record our appreciation for the consultation process with the director and his staff, and the ongoing dialogue that has taken place, particularly over the past year. It has been extremely helpful to the legislation committee and to our membership in becoming knowledgeable of the proposals, the intent of the changes, and in many cases, the rationale.

Because of the limited time allowed to make our presentation to this committee, we will be addressing those areas that are of concern to our

membership as a whole. We make this clarification due to the variety of cemeteries that make up our membership and to which we alluded in prior comments.

Each type of cemetery operates under a different set of conditions, and in some cases, with opposing objectives. This is what makes our association unique, but it also requires that we approach legislation matters from a wide range of angles.

It can be assumed we embrace those areas we do not address or we do not feel sufficiently of one voice to raise objections to them.

The first area of concern we have is sections 23 and 24. Collectively, they are the most disturbing sections of the proposed act and could result in disastrous consequences in the cemetery industry. These sections have the potential to destroy certain cemetery operations.

Sections 23 and 24 involve the buyback of interment rights at any time after a 30-day cooling off period on contracts for the purchase of pre-need services and supplies, and again, buyback upon cancellation of such contracts.

These two sections would allow for the development of several damaging practices jeopardizing cemetery operations: (1) Land speculation in cemetery transactions has been recorded and is being experienced by operators, particularly in the United States. Section 23 will give free rein to this practice. (2) Serious reduction of cash flow for active and developing cemeteries. (3) Eliminate the possibility of future development in existing cemeteries and new cemeteries. (4) Since the guaranteed buyback is being considered, one buyback transaction in a rural cemetery of a family lot could virtually destroy that operation, causing it to be a liability of the local taxpayers. (5) These two sections, along with section 36, eliminate the possibility of any cemetery offering pre-need purchases. Pre-need arrangements are sought by the consumer and have become an important component of estate provisions, along with the purchase of life insurance and filing a last will and testament.

We request that these sections be amended as follows:

(a) Section 23 to state that the purchaser of the interment rights is given a 30-day cooling off period, during which time he may request in writing that the owner purchase back these rights. Any purchaser submitting a request during a period of time would receive a full refund. After 30 days, there would be no provision for mandatory repurchase of interment rights by the owner from the consumer. The consumer could request that the owner purchase back interment rights, but any buyback would be entirely at the discretion of the owner.

(b) Section 24 to state that after 30 days the owner will pay back to the consumer a full refund of the purchase price, plus interest, less an administration fee not to exceed 50 per cent of the original value of the purchase. This section is to be in effect on the passage of the act.

It is the consensus of the association that the amendments to sections 23 and 24 will eliminate the detrimental aspects of the proposed act as were outlined in the preamble of the amendments.

Another concern we have is the right to sell cemetery supplies and services. This is already entrenched in the existing Cemeteries Act and

remains within the proposed act being established through Bill 31. We believe that this right is important to the cemeteries of Ontario and are emphatic that it not be altered.

In support of this right, the committee should be aware that cemeteries provide burial rights at low cost to indigents and citizens who rely on welfare to pay funeral expenses. The province of Ontario regulates the price of burial rights and other services and requests that there be an area of the cemetery set aside for minimum-priced interments. This price does not relate to the current value of the land. Because of regulation of fees for burial rights and most cemetery services, cemeteries cannot be seen as free enterprises and therefore exemption from some taxes is not abnormal.

Cemeteries are considered public property, being open to the public, being considered as parks and historical areas. They are required to be safe areas and they are expected to be areas of beauty for ever. The costs to maintain these conditions far outweigh the revenues from perpetual care and further revenues are needed.

Administrative costs increase in order to have available at all times the records of the cemetery to both the public and others who serve the bereavement sector. Others who serve the bereavement sector are not required to have records open to the public. We wish to demonstrate that cemeteries must continue to have the right to sell goods and services in order to, in turn, maintain acceptable cost levels for burial rights and cremations.

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We agree with the intent that the investment of trust funds should be regulated to ensure the primary purpose of providing care and maintenance of a cemetery in perpetuity. Many cemeteries in Ontario have limited care and maintenance funds. Whether these funds are limited or not, it is essential to ensure that the funds continue to increase and grow to keep ahead of inflation. Unfortunately, the proposed act only hinders the intent of perpetuity by limiting the investment of trust funds under sections 26, 27 and 28 of the Trustee Act. We ask the act be changed to permit the investment of trust funds under section 63 of the Pension Benefits Act.

Just to step aside for a moment and discuss one item of the Funeral Directors and Establishments Act as well, the close association between the members of the bereavement sector can be appreciated. Cemetery operators look to receive co-operation from funeral directors on an ongoing basis. The utmost concern of the Ontario Association of Cemeteries, as well as of yourselves, is to ensure that the community in which we live remains environmentally safe. We feel confident that with this strict regulation, this could be achieved. It is for this reason that caskets sold for the deceased who are to be cremated must be constructed completely of combustible materials.

Finally, Bill 31 is a lengthy and involved document. Our concerns are few but are very serious in nature. We have, through this presentation, attempted to advise you of those portions of the proposed legislation that we feel are unacceptable in their present form. We have requested participation in the ongoing formation of the regulations that will complement this act.

We thank you for this opportunity to hear the voices of the cemetery operators of this province. We will continue to co-operate with the government in the implementation of legislation that governs our industry. It remains our purpose to provide for dignified burials and cremations and to encourage the

development of cemeteries so that they may be worthy of the living and a tribute to the dead.

Mr Tatham: I was just wondering about this matter of buying back. If a person has bought several plots, say, one for himself and one for his wife and then he has moved perhaps to England or some place, what takes place? Is there no requirement that a person should have an opportunity to—

Mr Cole: On a buyback now, there is no requirement that the cemetery must purchase back the rights to that land. What we are proposing with the buyback is that the consumer have a 30-day cooling off period and the cemetery not have a guaranteed buyback through heirs into perpetuity. A number of accountants from the association membership have also stated that with the buyback, you would have to defer some of your sale which would look towards future cancellations.

Also, with the buyback, it could force a cemetery operator, especially in a rural area, to turn his operation over to the hands of the municipality in which that cemetery is located if he had to pay out the funds on a buyback on written instructions from the consumer, because he would not necessarily have sufficient funds in his account to handle such a buyback.

Mr Tatham: I just do not understand that. In what way? Let's put a dollar figure on it.

Mr Cole: Let's say it is \$1,000 for a grave space to make it simple. If they purchased a grave space, say, 20 years ago at \$10 and then at today's price they requested the cemetery to repurchase the lot, then the proposal is that the consumer would get 50 per cent back of what the value is that the land is selling for today, according to the tariff of rates that is filed with the ministry. Therefore, they would get \$500 back. This also could happen in areas where mausoleums are located, where you end up with a \$10,000 crypt at today's sale and in 15 years that same crypt could be worth \$20,000 with inflation, cost of building, replacement value and so on. The cemetery operator would then have to come up with \$10,000 at that time.

Mr Tatham: Would the cemetery owner not then be able to resell that?

Mr Cole: He would be able to resell that, but he has to put that back into inventory. When he puts that back into inventory, it is harder to sell a location in an older area, especially in a mausoleum when you have ongoing construction.

The thing is, the cemetery does not gain from the resale. They put it back into inventory unless they are able to resell it the next day for the \$20,000, let's say. But at that time, they have already given \$10,000 back to the consumer and they have to then put the 20 per cent that is now required from that sale into the perpetual care fund, and they do not get back the first amount that was put into the perpetual care fund on the \$10,000 sale.

Mr Tatham: In other words, if you sold it for \$10,000, you have to pay \$5,000 back to the individual. Therefore, you still have this—

Mr Cole: You still have \$5,000 left. Okay, if that is on today's value, and you in turn sell it tomorrow, you have already given \$5,000 back to the consumer, plus then you have to reinvest \$2,000 into the perpetual care fund, which amounts to \$7,000 realistically.

Mr Tatham: What would you think would be fair?

Mr Cole: Now that the ministry, in the proposed act, has taken away telephone solicitation, the pre-need sales on the buybacks with telephone solicitation also will be reduced somewhat, I expect, in the pre-need end of it. The consumers then are coming in on their own volition to the cemetery office to make that purchase, so they are under no stress or sales tactics that would force them to make that purchase. Therefore, they would come in and make the purchase at the cemetery, and hopefully they would not look at a cancellation as they would in other areas.

What our association is suggesting is a 30-day cooling-off period for that family. It is the practice, I believe, of all the cemetery operators in the province to buy back cemetery property at whatever they wish.

The Chairman: I have a growing list of members here. I am sorry to cut in on you.

Mr Tatham: I have lots more, but let somebody else go ahead.

Mrs Stoner: I want to follow through on this buyback thing, because from a consumer perspective, if people bought a family plot two years ago—so your 30-day factor does not come into it at all, no pressure—for \$2,000 and they are moving, as Charlie says, to England and they are not coming back to Canada, they own something in this country that is worth at least \$2,000, and maybe more by now, but they are only going to get \$1,000 back.

To me, that is unfair to the consumer. Everything else they own, they can sell, but only the cemetery lot, because it is in the cemetery and you control how that is used and they cannot pack it up and take it with them—they are not being treated fairly at all. I certainly agree that the no-buyback requirement that was there in the past is not fair either, but frankly, I do not think the buyback scenario we have been talking about is protective enough of the consumer. I have a real problem, having paid \$2,000 two years ago and then only getting \$1,000 back.

I concur that we have to factor in somehow the moneys that go into the trust account and the administration costs on your side and the maintenance of that physical property in advance of need. You probably have a cost factor there as well, but the consumer has to be protected, and frankly, I am not sure he is being protected enough.

Mr Taylor: Perhaps I could direct this question that you have, whether the consumer is being protected, over to Mr Vey and give him an opportunity to respond, as well.

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Mr Taylor: Two areas of concern from the association with respect to buyback: If a family comes in and buys a lot, using the example of \$2,000, you would have to make a contribution to the care and maintenance fund. If we give back to the family the entire purchase price, we cannot withdraw from the care and maintenance fund, so we automatically lose from our general fund.

The concern is more so in a rural cemetery. We mentioned that many cemeteries within our association have limited burials of one or two a year. One buyback could potentially destroy that cemetery operation, due to the fact that it has an extremely limited care and maintenance fund. They only do one

or two interments a year, so their general fund is extremely limited. If a family comes back and requests a buyback, it could virtually destroy that operation, which in turn throws it right back on to the taxpayers, because that cemetery is going to go broke financially.

Mrs Stoner: On the other side, the folks come in and they pay \$2,000 to you to buy a plot. Then they move to England and you give them back \$1,000.

Mr Vey: Right.

Mrs Stoner: And you have put 35 per cent of the \$2,000 into the trust.

Mr Vey: Right.

Mrs Stoner: So you have made a profit on that lot, plus you still have the lot, which is worth, again, at least \$2,000, and you can turn around and sell it again.

Mr Vey: You have lost money on your general fund.

Mrs Stoner: No.

Mr Dietsch: You still have the commodity and you have made \$300.

Mrs Stoner: You still have the lot.

Mr Dietsch: You still have the lot, plus you have made \$300.

Mrs Stoner: Plus you have made a profit on the first sale. The consumer is out.

Mr Cole: That would depend also on when the cemetery repurchases that lot. What we are talking about here is going into perpetuity through heirs, where that lot could be worth a lot more than \$2,000, 50 or 100 years from now. It certainly puts the cemetery's cash flow in an extremely precarious position. What we are proposing here is that the consumer have a 30-day cooling-off period, and then, if he wishes, he can negotiate with the cemetery on the repurchase.

What is being proposed now under section 18 of this is that they must sell the lot back to the cemetery, but what should be done is the consumer should have the right to sell that lot to whoever he wishes. Then when the deed transfer is made, the buyer registers with the cemetery and the required perpetual care amount can be made at that time.

Mrs Stoner: Is that a recommendation from your association?

Mr Cole: Yes.

Mrs Stoner: That there be the ability of private individuals to sell lots at their prerogative.

Mr Cole: That is right.

Mrs Stoner: And that there be a central registry office or registry function for those lots.

Mr Cole: Which would be the cemetery office, yes, and then they pay the required amount to the perpetual care fund or the care and maintenance fund at that time. Then the consumer in the marketplace, depending on the cemetery, could ask whatever he wished for the lot. That would not be a concern of ours, as long as when the deed is registered with the cemetery, the required care and maintenance goes into the fund.

Mrs Stoner: Which then means that the Joneses, moving to England, could sell their lot for the \$2,000.

Mr Cole: Or more.

Mrs Stoner: Thank you very much.

Miss Martel: I would have to think more about that one, because I do not know if we get into a problem of nonprofit cemeteries versus commercial cemeteries, etc, in terms of the buyback. We also had the problem with the Jewish group yesterday, which operates a totally different package, so I am not sure if that option would work for all of the people. We would have to look at it more.

But I am concerned about this question of sections 23 and 24, because yesterday and the day before we heard a lot of emphasis placed on accounting and how accountants were going to say it was just not going to work. There are two things I want to raise, and then go at you again in your response.

I think the thing that bothers me is the assumption that consumers are frivolous in some way or another and that if you introduce this type of mechanism into the bill, you are going to have all kinds of people who prepaid for a package coming back at you and demanding their money back. Any questions we have raised so far in terms of individual cemetery owners as to how often they get into this has shown that there really is not a high percentage of that happening. I do not see why consumers would start doing that now with this package in place.

Second, some of the cemeteries, we were told, do in fact offer a resale package. One gentleman in particular talked about a package where they were giving back 65 per cent now of the sale price if someone came back and wanted the seller to repurchase it. So the 50 per cent was quite a good deal to him because they were giving back 65 per cent now. That was a good deal.

Given that you are going to have the ability to sell the plot again and given that I do not think consumers are so frivolous that they are going to start doing this just to make your lives miserable, I do not understand why it is such a problem and why we are getting told again and again that cemeteries are going to go out of business if sections 23 and 24 pass in their present form.

Mr Cole: If it is such a small deal with the consumer, why has the ministry seen fit to introduce this into Bill 31? What I am saying is that potentially this could bankrupt a cemetery operation.

Miss Martel: I am having trouble understanding why. Unless there is an absolute run on people coming to do that and the cemetery is not reselling any of the plots, which I would not understand either, I do not see how that is going to drive a cemetery into bankruptcy. That is the difficulty I am having.

Mr Taylor: Contrary to what a lot of people think, cemeteries are not large money-making operations. Our general funds are kept to operate the cemetery on a year-to-year basis. We are dealing with an awful lot of smaller cemeteries. I think the number of cemeteries in Ontario is something like 5,000. With these smaller cemeteries, many people have purchased, in the past, family lots of maybe 15 or 20 grave sites. The potential of this family who purchased the property 20 years ago moving away and wishing to cash in on something like this particular deal could actually be very harmful to that very small operation.

This is where our concern lies with the Ontario Association of Cemeteries. Where is a small operation going to find the finances to purchase back property which it paid, let's say, \$20 an acre for and now it is having to pay back to the consumer \$200 a grave? A small operation really could not handle something like this type of financial arrangement. We are very concerned that this could happen in Ontario.

Mr Wiseman: I think my question was pretty well answered by Shelley's, but we heard yesterday of a fast-moving community like Hamilton, I believe it was, where they had 1,300 burials a year in this one cemetery. I think what Shelley was remarking on was around one per cent was what we established as being people coming back for one reason or another looking for their money back. In the small municipalities that you talk about, I live in those areas and we do not have the movement of people like you mentioned.

I do not know who would buy 15 graves in Jasper, or an Easton's Corners funeral plot, or even Perth. They may buy four or five. The chances of their children wanting to be buried with them are pretty slim. The most I have ever heard of is maybe four being purchased, but 15 is way out there. You are worrying about the perpetual care part of it. I understood that was an add-on: you bought your lot and then 35 per cent of the purchase price of the lot was charged over and above that for it.

I see people shaking their heads no. Why would it not be a simpler matter to say, "The price of the lot is so much and the perpetual care is 35 per cent of that amount" and get around all the hassles that we have been talking about this morning? You have your perpetual care looked after and you just get the 50 per cent refund on the lot itself if you decide to take your money early.

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Mr Taylor: Where the problem lies, I think, as we all are aware, the province is growing population-wise and where property once was purchased for \$20—a grave was purchased for \$20—cemeteries now have to price out their graves properly so that they can purchase future lands for their community burial sites. This is where we have a problem. You say you are not aware of any very large family sites. I know in our cemetery we had one that was 30 graves and just recently we sold another six-grave lot type of thing, so they do appear.

I think it is more so in country cemeteries, where families want to be together, rather than an urban centre, where the urban society purchases two graves. I really do not think the concern would be in a larger centre. It would be mainly in the smaller centres where the property was very cheap when the church, let's say, developed the cemetery, and now, because they are trying to keep up with the marketplace of other cemeteries and other urban centres close by, their prices have increased. This is where the problem could

lie and I think it is a potential problem in the future for smaller cemeteries.

Mr Wiseman: Just briefly, could you comment on why you would not put your perpetual care at the end so that you could get around all this hassle?

The Chairman: Could you make this a very brief response, because Mr Cooke has a short question?

Mr Wiseman: I am sorry. I just thought it seemed such a simple way of doing it.

Mr Cole: It is a concern of the small cemeteries in the small rural communities such as Carleton Place that when a family came from Ottawa, say, to purchase a large number of grave spaces, they have put a restriction on that. The person has to have been a member of that community and not come out there and purchase large tracts of land because it is much more economical in a small, rural area than it is in a large, urban area cemetery. This is where a potential buyback could hurt that small cemetery, if they only use two grave spaces and they had purchased 10 or 15.

Mr D. R. Cooke: I think some members of the committee have been concerned at hearing of situations where graves have been purchased decades ago and the people have been lost track of, court orders have been obtained, graves have been resold and the people have come to use the grave. Do you have any problems with putting some onus on the cemetery to try and maintain some contact, say every five years or so, by sending a letter to Aunt Gertie reminding her of her purchase, it being the case that in many families people do not want to talk about this at all, in the first place, and they may not be aware of what has transpired in the form of a purchase?

I have, frankly, encountered that recently myself where the family had no knowledge that a number of plots were purchased in 1957 and came very close to buying a new plot in the same cemetery. It was just by chance that they found out it was there; it was not through any help from the cemetery.

Mr Taylor: That is a good suggestion. There is a concern of mine that lies there, that we do not always collect the funds at the time of need of a burial. Sometimes we will delay the charges for 30 days or whatever, and we have the proper documents signed. We have had cases where we have sent out the invoices 30, 40 or 50 days later and the people have moved. This is the biggest problem, especially with the society we live in today where people are on the move. Locating them every five years could be an impossible dream.

Mr D. R. Cooke: I am not suggesting that you would have to go and hire a detective at that point. You may want to do that to collect your bill. I am simply saying, if there were a reminder that came to a more stable family situation, it may filter down in the family as to what is available and what purchases have been made and those problems might be avoided. It is a simple letter.

Mr Taylor: As I say, it is a good suggestion. I think it would work in a small, rural type of cemetery. In our cemetery, with 30,000 interments, it would be a bit of a hard task to do, but something should be done. We highly recommend at the time of a sale that if they do move, would they please inform us of their new address, and we would record it on our files.

The Chairman: Gentlemen, thank you. You can see that the committee members found your presentation and your responses interesting.

Mr Taylor: Thank you.

The Chairman: The next presentation is from the regional municipality of Peel. I believe Mr O'Connor is here. Mr O'Connor, welcome to the committee. You are all by yourself?

Mr O'Connor: It is just me holding the fort today.

The Chairman: What a big responsibility you have. Whenever you are ready.

REGIONAL MUNICIPALITY OF PEEL

Mr O'Connor: Mr Chairman, members and staff, good morning and thank you for the opportunity to have our views heard before you today. My name is Patrick O'Connor. I am the assistant regional solicitor for the regional municipality of Peel and I appear today on behalf of the regional municipality and also with a commission of sorts from the town of Caledon, which is one of our municipalities within Peel region.

I would like to start in a general way by welcoming the initiative represented by Bill 31. I know, in reviewing it myself and in obtaining comments from other interested parties in the municipalities, that the initiative on the whole is very welcome. We think it does accomplish a considerable degree of clarification and updating of the existing act.

Having said that, however, there are some fairly technical concerns that I would like to raise with the committee today. The first one of those is to be found in section 1 in the definition of municipality. You will find there that municipality is defined in terms which include both a town or city and a regional municipality. This has caused us some degree of concern, because it leaves us uncertain as to which level in a two-tier municipal government, such as Peel region, is being referred to later on.

For instance, in section 3 soon to follow you will see that the municipality is required to consider whether its approval should be given to the opening or expansion of a cemetery. Just by reading section 3, one would not know—referring back to the definition of municipality—whether it is the regional level or the area municipal level that is to give that approval or who is to hold the public meeting set out there. So for clarification purposes we would suggest that another look be had at that definition.

My understanding is that throughout Ontario, cemeteries are primarily a matter of area concern, so if the decision was to exclude regional, metropolitan and district municipalities I think the intent of the bill would be met. I will leave that submission there.

Moving on, then, our next concern was with that next section, section 3, where the establishing or the alteration of a cemetery is to require municipal approval as well as the consent of the registrar. The municipal approval appears to be something of a precondition to the registrar's consent.

There is a fee payable to the registrar when he is receiving the application. I have asked the committee to consider that a municipality, in going through the process of considering the public interest and whether or not an expansion or opening of a cemetery is in the public interest, is going to have to incur a certain degree of cost. It is going to have to consider the planning and other implications of whatever it is it is being asked to

approve. It may be holding a public hearing, which is a proposition that will involve some expense in terms of notice-giving and other requirements.

The suggestion or recommendation that I am coming to you with today is that the municipality be entitled to recover just its reasonable costs of undertaking its part in the approval process, no more. It is not intended to be a profit-making undertaking but is in order to defray those costs. Whether that would be built into the fee payable to the registrar or something separately charged, I do not have any particular submission to make on that, but it is a consideration we would ask you to take under advisement.

1150

Moving on, I do not have a submission to make on every section of the bill, I assure you, but the next one does happen to be section 4. I am concerned there about the concept of a public hearing. Perhaps it is just semantics to some, but I think in a legal document such as this is or will be, it is important. A "public hearing" as opposed to a "public meeting" has a certain legal connotation that, I would submit, is not entirely appropriate in the context here under consideration.

We have a municipal council listening to representations as to whether something to do with a cemetery is in the public interest. It is performing there, I would suggest, a function it is well used to performing, a legislative and a very political type of function. By labelling the procedure a public hearing, I think there is some danger that we are going to attract some of the formal requirements that are usually attached to public hearings, to be found in the Statutory Powers Procedure Act, things like the right to cross-examine, the right to have counsel present, the right to subpoena through the tribunal. These are not appropriate processes, I would submit, for the kind of town meeting that I think was contemplated when this was drafted. I suggest that what is called for here in the bill is a public meeting with an opportunity for the public to make representations as to what the public interest is.

In a similar vein, there is a requirement in the bill as it now stands that the municipality or the municipal council give reasons for whatever determination it might make as to what the public interest is. With great respect, I suggest that a municipal council is an elected body that is every day coming to determinations as to what is and is not, in its view, in the public interest, and the requirement that it give reasons jars somehow. It is not a requirement that the Legislature or the Parliament would impose upon itself when considering matters of public interest.

I point out that there is an appeal mechanism to the Ontario Municipal Board, where the OMB has express authority to reconsider matters of public interest, and in my submission it is not appropriate that a council be required to give its reasons, although it might very well wish to do so.

Finally, with respect to this particular process of municipal approval or withholding of approval, the Ontario Municipal Board, in section 6, is given express authority to "reverse the decision appealed from and substitute its own decision." I suggest that if the OMB is to have that authority—and that in itself might be a matter of some contention, but I am not going to address that—it should also have the express authority to affirm or vary the decision of the municipal council. A strict and perhaps overly technical reading of section 6 as it presently stands would suggest that the OMB can do nothing but reverse the decision appealed from and substitute its own decision.

I will move on, then, away from this approval process and skip to section 59 of the bill. I am concerned with the case of the neglected cemetery and the repair costs incurred by a municipality in remedying or bringing to order a neglected cemetery.

First, section 59 provides that the municipality may have the required work done. Municipalities being the creature of the province and doing everything by conferred and, hopefully, express authority, it would be useful to have a provision to the effect that the municipality may do the required work itself in addition to having it done. But that is not the most important point.

The recovery of the costs of doing the work is provided for in section 59. Section 59 does not go on to provide, as other legislation does, how those costs are to be recovered. I would refer by analogy to the Environmental Protection Act, where municipalities are entitled to recover the costs of spill cleanups they are required to undertake; where there are contaminants put into the natural environment and the municipality goes out and cleans it up at the expense of the owner. The Environmental Protection Act goes on to explicitly provide that compensation may be enforced by an action in the courts of competent jurisdiction. I suggest that a similar provision would be very useful in section 59. I would go beyond that.

We are dealing here with a case where, if a judgement is obtained, a municipality is in a rather difficult position. The ordinary way of enforcing a judgement is to take a writ of seizure and sale, and if the asset of the debtor is a piece of land, one would ordinarily take steps and ultimately, if necessary, sell the land from under the debtor. That is perhaps not appropriate when one is dealing with a cemetery. As a matter of public policy, I would think it is not appropriate.

I suggest that the enforcement of a judgement awarding compensation to a municipality would be possible and practical by making the directors of a corporate owner personally liable for any such judgement and by providing the court with the power to revoke the licence to own the cemetery, which is provided for elsewhere in the scheme contained within the act. With those enforcement mechanisms in place, I think the bill can give some means to a municipality to do what it clearly intends the municipality to do; that is, collect compensation where it is required to repair a neglected cemetery.

I will deal for a moment with abandoned cemeteries. Section 60 of the bill provides a means by which an application can be made to a district court judge for a declaration that a cemetery is abandoned. That application can originate from three separate sources: the municipality, the owner, or the registrar. However, the bill provides in its present form that no matter who brings the application, it is the municipality that pays for it. That seems, with respect, to municipalities to be inappropriate. I think the usual way of the world would be that he who brings the application bears the cost.

Similarly, with respect to subsection 60(8), the interim responsibility for the maintenance of the cemetery is said to be that of the municipality, so that by merely launching an application, the ball is tossed into the municipality's court. That also seems, with respect, inappropriate. Once a judge has made a declaration that an abandoned cemetery is an abandoned cemetery and should be a municipal charge, then that is a municipal responsibility. But in the interim, in my submission, the responsibility for maintenance should rest where it has rested all along: with the owner of the cemetery.

The last submission I have to make is the one which I referred to earlier as being on commission from the town of Caledon. By way of background, the definition of "municipality" as it presently stands confused us somewhat, to the extent that the region took hold of this particular matter when in fact I think it is fair to say that the greater and more direct interest in cemetery matters lies with the area municipalities.

1200

When the region's report was circulated to the area municipalities in Peel, there were some comments made and revisions made. One of the comments that came to us from the town of Caledon was that I bring to this committee a suggestion that there be established a fund for the maintenance of unapproved cemeteries, unapproved aboriginal peoples' cemeteries, and abandoned cemeteries.

The bill provides certain standards for the maintenance of cemeteries. On my reading of it, with respect to abandoned cemeteries, they are not to be neglected. With respect to burial sites of different types, they might be left alone, but if they are to be disturbed they have to be made subject to a site disposition agreement. In either case, with these older cemeteries that either have been abandoned or constitute historical types of cemeteries—farm burials, aboriginal peoples' cemeteries—the town of Caledon advises the region, and through the region the committee, that it does incur considerable costs to repair these cemeteries and bring them up to the standard that the public expects. The purpose of the fund that the town of Caledon and the region suggests might be established would be to finance municipal efforts to deal appropriately with burial sites that for some reason must be disturbed or with abandoned cemeteries that have no other means of upkeep.

The analogy we would draw is with the General Welfare Assistance Act, which provides 50 per cent provincial funding, usually, for the burial of indigent people. I think one does not have to leap very far here to draw an analogy with an indigent cemetery. I would suggest there is a provincial interest in ensuring that indigent people are buried in places that are maintained to the standard contemplated here in Bill 31, which are standards we agree with, by and large.

Through the clerk, I have circulated written submissions both from Peel and from the town of Caledon. I would be very pleased to entertain any questions members may have. Thank you for the opportunity to be heard today.

The Chairman: I noticed you went by section 77 and your suggestion that a provision be added to make it illegal to permit domestic animals to have access to a cemetery. How in the world would you do that?

Mr D. R. Cooke: You probably have owned a dog.

Mr O'Connor: I have owned a dog. I do not presently own a dog. There are some points in the written submissions that I have not touched on in my oral submissions. Sorry, to what are you referring?

The Chairman: Section 77.

Mr O'Connor: How would one make it illegal?

The Chairman: It seems to me the only way you could do that would be to have a fence that was closed. This would restrict access to persons who

want to go and visit a gravesite at their discretion and not at the discretion of the people who run the cemetery. If it is open, how do you keep animals from straying?

Mr O'Connor: That would be the responsibility of the animal owner, I would suspect. There are laws that require people to prevent their animals from running loose in a park situation. I would think that a similar provision penalizing people who permit animals under their control to be present in a cemetery would be a step in the right direction.

The Chairman: Mr Pelissero.

Mr Pelissero: That was my question, thank you.

The Chairman: I am sorry. It is not my intention to pre-empt members of the committee. Are there any other questions or comments from members? If not, Mr O'Connor, thank you very much for your presentation. We also had a very good presentation from the city of Brampton.

Mr O'Connor: I was not aware of that.

The Chairman: Yes, they made a very good and a very thorough presentation as well.

Mr O'Connor: We will have to liaise more closely. That would not be the first time.

The Chairman: The committee is adjourned until 2 pm.

The committee recessed at 1206.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

WEDNESDAY 27 SEPTEMBER 1989

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mr Brown

Cunningham, Dianne E. (London North PC) for Mrs Marland

Farnan, Michael (Cambridge NDP) for Mr Wildman

Haggerty, Ray (Niagara South L) for Mr McGuigan

Pelissero, Harry E. (Lincoln L) for Mr Lipsett

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Board of Funeral Services:

Posluns, Donald, Legal Counsel; with Porter and Posluns

Reynolds, Alison, Registrar

From the Ministry of Consumer and Commercial Relations:

Webber, Bernard, Assistant Deputy Minister, Business Practices Division

Cooper, J. M., Director, Legal Services

Tappenden, Eric C., Director, Business Regulation Branch

From Canadian Memorial Services:

Hamilton, John, President

MacKinnon, Bob, General Manager

From Steeles College Memorial Chapel:

Gold, Herschel, Legal Counsel; with Philp, Fonseca, Rumack and Gold

Donsky, Gordon, President

From Nelson Monuments Ltd:

Nelson, Garth S., Vice-President

Individual Presentations:

Halden, David, Sales Counsellor, Pleasantview Memorial Gardens

Ruffolo, Anna, Sales Counsellor, Glen Oaks Memorial Gardens

Halden, Rodger, Regional Property Manager, Greenlawn Memorial Gardens

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 27 September 1989

The committee resumed at 1402 in room 151.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order as we pursue truth and justice concerning Bill 30 and Bill 31. We have a full slate this afternoon, beginning with the Board of Funeral Services. If those people would take a seat at the table, we can proceed. As you might know, we have half an hour for each presentation. You can use part of that half-hour for your presentation and the balance for questioning from the members or you can use the entire half-hour to make the presentation. If you would introduce yourselves, we can proceed.

THE BOARD OF FUNERAL SERVICES

Mr Posluns: My name is Donald Posluns. I am a lawyer and I am appearing for the Board of Funeral Services. With me is Jim Sargent, the chairman of the Board of Funeral Services, and Alison Reynolds who is the registrar of the board.

As I suppose you may already know, the Board of Funeral Services is the body that was effectively created by the present Funeral Services Act to administer that act and it is continued under Bill 30. Our submissions are limited to Bill 30.

As well as licensing and disciplining the licensees, the board is also responsible for setting health standards, auditing the trust funds of prepaid funerals, checking prices and casket display rooms and generally governing the licensees. Because its job is a public interest job, the board is obviously pleased about the public interest features of the bill. Everybody has told you about that, so I will not bother to repeat it. Most of those features are conceptual, and it is easy to agree with things like a compensation fund, a ban on solicitation, legitimization of transfer services and so forth.

The board, however, is also very concerned that, at a detailed or administrative level, the act will not allow it to properly serve the public interest. We have distributed to you a submission which is about as interesting as dishwater. It is very detailed, it is very tedious and it is, in my submission, absolutely critical. I cannot begin to review it with you. I know that everybody else reread the submissions or summarized them, and when you come to look at ours you will see that is not possible in the time that is available.

I can only give you the flavour of how the dull dishwater translates in some circumstances into real life and hope that will spur you to read the detailed submission and see not only the problems but also actual concrete proposals we have made for changing the legislation. I am not here to complain

and say somebody did not do a good job but to suggest actual alternatives.

Having said that, I wish to explain an example of the sort of problems that will arise under Bill 30 as it is presently drafted. I have chosen for the first area the issue of complaints and discipline since that is a fairly busy area for the board.

I want you to assume that somebody comes forward with a complaint. The complaint is filed with the registrar and it goes through the regular process. I want you to assume that it is a fairly minor complaint as, in fact, most complaints are.

Under Bill 30, if you suppose that the complaints committee decides not to refer it to the discipline committee, which is the procedure by which discipline proceedings are begun against licensees, and if you assume that the complainant is dissatisfied, then what I am asking you to do is to put yourself in the position of the complainant. Let's suppose that it is a circumstance where a family member has died and you are complaining on behalf of the family about some impropriety with respect to the funeral.

If the complaints committee, for some reason, does not buy your complaint, you—the complainant, the member of the public, the consumer, whatever language you want to use—have to require a full-blown, formal hearing by the Commercial Registration Appeal Tribunal. That means you have to mount the hearing, you have to marshal the evidence, you have to be sworn in, you have to give the evidence, you have to make whatever argument is going to be made or hire a lawyer to do it. All of this is open to the public, I might add; I will come back to that.

If CRAT decides that you were right and it is going to send it to the discipline committee for a hearing, the licensee can appeal from CRAT to the Divisional Court. That is a formal legal proceeding in an appellate court. It would be almost impossible for anybody to survive that process without hiring a lawyer. The complainant is a party to this hearing so the poor complainant would have to go down, or hire a lawyer to go down, to Queen and University to the Divisional Court, file the factum beforehand, get up and argue the case and explain why this complaint should go to the discipline committee.

There is a possibility that the Divisional Court would dismiss the complaint and the licensee would apply for leave to appeal to the Court of Appeal, but I am trying to keep it within bounds, because if you really took it to its logical extension this poor complainant would be years in the legal process. Let's keep it within relatively sane bounds.

Suppose at this point the Divisional Court agrees with the Commercial Registration Appeal Tribunal and sends it off to the discipline committee. Now the complainant of course has to testify again because it is the complainant's story and normally the complainant is the one with the evidence. This is now the third proceeding in which the complainant has either had to appear and give evidence or has been required to launch some legal proceeding. This is apart from the original complaint at the complaints committee.

First, there is the hearing by CRAT; second, there is the appeal to the Divisional Court at the instance of the licensee, and now there is the hearing before the discipline committee.

Under Bill 30, if the discipline committee finds the licensee to be guilty of professional misconduct, the licensee has another appeal to CRAT.

This is the same CRAT that has referred the case in the first place, but none the less it has a second full-blown formal legal proceeding under the Statutory Powers Procedure Act. That means the complainant, for the fourth time, although the complainant is not now a party, none the less has to be sworn in and tell the story for the fourth time. From there, there is another appeal to the Divisional Court, but mercifully the complainant will not be necessary at that point.

That means that in a relatively routine occurrence, a minor complaint where the complaints committee and CRAT view the facts slightly differently, there can be five formal legal proceedings, all at great expense, all open to the public, all with uncontrolled TV, and in four of them the complainant will be subject to examination in chief and cross-examination about the details of the family's bereavement and there may be a whole bunch of family members testifying as well.

1410

You might think that is a bit of an exaggeration, so you can look at it the other way. Supposing that the process clicks in and the complaints committee sends it off to the discipline committee. At that point the licensee is entitled to a hearing by the Commercial Registration Appeal Tribunal and at that hearing, since it is a formal hearing, the complainant would have to testify. So there is a kind of free discovery of the complainant, as well.

So you go through the same process. It is just that now the licensee has control of the process. You have the CRAT hearing and then you have the Divisional Court appeal. Then there can be a discipline hearing; then there can be another CRAT hearing; then there can be another Divisional Court appeal. The only difference is that the complainant and the complainant's family only have to testify three times if the complaints committee agrees with the complainant in the first instance.

That does not take into account the following possibilities. I am trying to be quite reasonable. These are routine processes that occur daily in Ontario where there are complaints of licensees over minor issues and there is some dispute about what the facts really are. I am not taking into account far-out fancy appeals to the Court of Appeal or applications for judicial review. If, for example, the complaint also involved an operator of a funeral establishment in addition to a funeral director, there would be another hearing in front of CRAT. So the complainant would presumably have to testify another time.

Here is a third example. Supposing that the complaint comes forward and the complaints committee basically does not treat the complaint very seriously, but it turns out in the course of its investigation that the licensee is crazy; I mean really crazy. Under Bill 30, as opposed to the present Funeral Services Act, there is no mechanism for investigating the mental impairment of a licensee. If there is no mechanism for investigating it, then there is no mechanism for prosecuting it. There is a hearing that is provided for in Bill 30, but any litigation lawyer will tell you it is an absolutely worthless device, either for the public or for the licensee who, through no fault of his or her own, may be impaired and whose interest it may serve not to be allowed to carry on dealing with dead bodies and trust funds and so forth.

Those are an example, a flavour, of the problems that the board sees. I would like you to contrast that with the proposal that the board has made in

the grey pages. This is as dull as dishwater, but if you can get through it what you will see is that first of all the complaints committee has an opportunity to try to conciliate between the complainant and the licensee if the complaint is minor. If the complaint is minor and conciliation is not particularly appropriate, the complaints committee can simply require the licensee to appear for admonishment. This is a very frequent power given to complaints committees.

If the complaints committee does refer the complaint to the discipline committee, then the complainant does not have to do anything except testify at the discipline hearing. There is no review, there is no appeal, there is no hearing. If the complaints committee says, "Go to discipline," the case goes to discipline.

There is an appeal by the licensee or, I suppose, by the board, to the Divisional Court, but the complainant does not have to be involved in that at all.

On the other hand, if the complaints committee does not refer the complaint to the discipline committee, the complainant, under our proposal, has a right to go to CRAT for an informal proceeding, where the complainant can talk like a real person to other real people without going through all the formal legalities. We call that a review and it is basically copied word for word from the present Funeral Services Act. It is amended to make some minor improvements, but basically that is the process. It would not bother me if you photocopied it out of the present act, but that could be slightly improved.

So that means that the complainant is not being cross-examined, not being pestered and under our submission—I will come to that in a minute.

Under the proposal, if the complaint involves both an individual licensee and an owner/operator, which could be a corporation or a partnership or anything, then you could have one hearing to dispose of the whole matter, so the complainant does not have to go to two or three different places in order to testify and be cross-examined.

None of these are very pleasant processes, I must tell you. It is easy to say, "We will protect the public and what we will do is process complaints." But it is not easy to be a complainant because our legal system puts a lot of safeguards on the side of the licensee. These complainants, if it goes anywhere, all have to be witnesses, sworn in to cross-examine and so on.

If the complaint suggests that the licensee is mentally impaired, then our proposal is basically, again, the same as the present Funeral Services Act with some improvements, that there is a requirement for a mental examination and a kind of no-fault proceeding, not a discipline proceeding, in which the person's mental competence can be judged and the appropriate degree of freedom allowed or not. The only time the complainant needs to appear in public under the board's proposal is in the discipline committee. That is once, which seems to me plenty for a complainant. Even there, under our proposal, there would not be bright lights and television cameras, and there would be in each of the four proceedings where the complainant testified in the first scenario, and there would be some control of the process by the discipline committee.

I could go on, but I have either made the point or I have lost it. I could go on by pointing out, for example, that if it is a complaint about a transfer service, the complaints committee can handle it but the discipline

committee cannot hold a hearing. Those are the kinds of difficulties.

I want to finish quickly. Let me switch into registration, which is another major area for the board to deal with. We have made a concrete proposal, which is based primarily on the models in the Health Disciplines Act and some more recent legislation, to deal with the following sorts of problems in registration.

One problem is that if the applicant is mentally unfit there is nothing you can do but to license the applicant. That is one problem. Here is another scenario. These, by the way, happen. I am not making these up. This next one is a real case that the board presently has. If a person whom I will refer to as a crook sets up a corporation and has minor children as shareholders, then the corporation is entitled to a licence under Bill 30. There is nothing the board or the registrar or anybody else can do about it. Another example is if you have somebody who is convicted of a pertinent offence, say necrophilia, and that person sets up a corporation, either with nominees as shareholders or with a dummy corporation between him, or her—but they are usually him—and the licensee, then the corporation is entitled to a licence notwithstanding the fact that this necrophiliac will have de facto control of the funeral establishment.

In the case of the transfer service the board is required to license a transfer service in spite of the fact that there may be nobody in the ownership of the operation or employed by the operation who has the first idea about accounting or dead bodies. There is no requirement at all. There is no entrance requirement, and there is a positive duty to issue the licence. That means you are going to have people in Ontario handling dead bodies and other people's trust funds without any training or screening whatsoever apart from the requirement to be honest and whatever else sitting in section 20. In terms of knowledge or education—I am not talking about honesty—there are no requirements and no ability to impose requirements.

It is hard for the board to believe that those sorts of scenarios, all of which are possible, will advance the public interest, which is the purpose of the legislation. The other matters that are in the grey submission speak to the same kinds of matters. I am not here to debate the wonders of whether to split or separate the cemeteries from the transfer services, but in terms of actually administering this statute to help people who either want to become licensees or who want to obtain the services of licensees, there are very serious weaknesses in the draft. The board is concerned because it is in the board's lap that the hot potatoes are going to fall. Those are my submissions. Thank you.

The Chairman: Thank you very much for your presentation. It is a bit scary in places, but we can handle it.

Mr Wiseman: I was kind of following for a while and then you lost me, and then I came back on again, I guess much like a church service. The minister loses you in between. I just wondered, you being a lawyer and me just being a layman, if some of the scenario you laid out is something that could possibly happen, do you have anything you are dealing with at the present time or that you have had to deal with over the last number of years?

1420

Mr Posluns: Yes, it is routine.

Mr Wiseman: Routine? Could you just tell me how many you might do like that?

Mr Posluns: How many would go to the review board?

Mr Posluns: The registrar says that approximately six would go to the review board in a year. There would be more under Bill 30, because either the complainant or the licensee could take it, whereas now I guess they can both take it, but if there is a referral, nobody can take it. So there would be more than six a year and they could all go through that process. It is not an exaggeration.

Mr Wiseman: But of the number of complaints you have handled, a lot of them would be, as I class them, bread and butter complaints, would they not? The complaints committee would hear them, and they would either be frivolous complaints or there would be something that could be worked out between the funeral director and the complainant. They would be a much greater number, would they not, and the six would be just a small fraction of those?

As I listened, and maybe I am being unfair, I wondered if we were worried more about a funeral director being dragged through the mud, seeing the television lights and the adverse publicity the funeral director might get, that funeral director so-and-so did this; all the funeral directors may be tarred with some of that fallout. Or are we really worried about little Mrs Jones who had a complaint that maybe was not handled in the way she thought it should have been, that she had to appear three times, first before the complaints committee, then the discipline committee, then another one and then maybe start the routine all over? You mentioned that the funeral director then could go back for another hearing and so on and so forth.

I thought it would be good for the board to have all the bases covered and show that the funeral directors and all the people connected with it were doing a super-duper job and that anyone who was not was going to be severely criticized. I cannot for the life of me believe that a crazy person, as you said, could be granted a licence and you do not have any jurisdiction to withhold that licence or not grant it. I just never thought we would be writing a law where that could happen. Perhaps the ministry people could clear us up on that.

Ms Reynolds: I think your comments have several divisions. I will just deal with the first one. I do not believe that this board at any time is trying to cover up for a funeral director. In fact, if a funeral director is doing something wrong, I am the first one to say that the world should know about it.

But I think the point we are trying to make is that any consumer who comes to us with any kind of problem is, no matter what else, bereaved. We believe the complaints process should be as easy as possible for that person. I am not saying we are going out and looking for complaints or trying to persecute funeral directors, but if a consumer has something which concerns him, he should be able to bring it to us and have it dealt with as easily as possible and not have to go through the number of hearings Mr Posluns has outlined.

Mr Wiseman: That is why I thought the majority of them would be pretty well finished in the complaints committee. Maybe the six you are citing are six out of 100 or six out of 200 or whatever the case may be.

Mr Posluns: Let's suppose that is true. I must say that I would not relish facing six angry consumers who have been through five proceedings in order to have a minor complaint disposed of in an ordinary proceeding, and who looked at any other statute in Ontario and said, "I have never seen so many hurdles to redress in my life." These complainants are not going to complain and stay in the process unless there is something very serious. They are just going to say: "This is obviously nonsense. The board's just covering up. They've put all these impediments in my way." You only need six. I would have thought that is plenty. Six irate families are more than I care to face down and say, "Oh, well, that's the system."

As to your second question, all you have to do is read subsection 20(3) of the bill, which says, "An applicant is entitled to a licence...." unless. In the "unless" you will not find the ability to make regulations and you will not find anything about mental capacity, although you will find you could take away his licence if you could prove incapacity.

Miss Martel: I want to ask a question both of the presenters before us and of the ministry as well, and it concerns the process you have outlined. I am only going to speak for myself: I did not look at it as being actually that complicated, but I have never dealt with it either. So I want to know from you first: Is there something in the present process which might have provoked this type of response? I will not comment on the degree, but was there something going on that you might be able to think of that necessitated a change in the manner in which complaints were being dealt with? Second, from the ministry staff, can they give us some idea as to what has prompted the type of system we see being set into place?

Mr Posluns: In answer to the first question, I am not aware of anything that provoked it. My guess is that it is simply a mistake, trying to marry the present statute with other statutes that already exist in the Ministry of Consumer and Commercial Relations. If you put a commercial statute and a professional statute together, which is essentially what Bill 30 is, I think this is the result. If you add to it an appeal, under section 11 of the Ministry of Consumer and Commercial Relations Act, you get the scenario I depicted.

Miss Martel: What you are saying, if I might just clarify, is that because we are moving into another ministry, in your opinion, and we are looking at other acts within that ministry and other appeal mechanisms, this may be what is happening, that we are adding appeal systems from other areas to this particular one and trying to make it better in some way, shape or form.

Mr Posluns: No, I am not saying that. I think that is what produced the result. I do not know what the motivation was except that, as far as I am aware, it had nothing to do with any problems with the Funeral Services Review Board or with the complaints committee of the Board of Funeral Services. As far as I am aware, I have never been told it was addressed to a problem, just that it was the system.

Miss Martel: Can I have the ministry staff?

Mr Webber: Mr Chairman, in view of the legalistic nature of the presentation, I have asked our director of legal affairs, Jerry Cooper, to respond.

Mr Cooper: My understanding is that with the drafting of the bill, the Funeral Services Review Board was replaced with the Commercial

Registration Appeal Tribunal. This is an existing tribunal that deals with consumer and other licensee complaints within the ministry. It is the elimination of one board. It is not necessarily a formalistic procedure. Many consumers, particularly with the new home warranty plan, appear before the tribunal without counsel. It can be formalistic if the situation requires, but the tribunal does everything it can to have an informal, understandable procedure.

Miss Martel: Might I ask as well if all of those proceedings are televised?

Mr Cooper: No. Currently, and I will admit I am not totally familiar with the current Funeral Services Act, the hearings are closed. Under the proposal, the Statutory Powers Procedure Act would apply to hearings, which would mean they would be open to the public unless the tribunal decides, for reasons set out in the Statutory Powers Procedure Act, that it should be held in camera. Those reasons usually relate to financial matters, personal matters, etc. So the Statutory Powers Procedure Act would apply to hearings of the committees and of the Commercial Registration Appeal Tribunal.

1430

The Chairman: Thank you, Mr Posluns, Mr Sargent and Ms Reynolds for your presentation this afternoon.

The next presentation is from a group which has been named in dispatches previously, The Simple Alternative, Canadian Memorial Services. Is it Mr MacKinnon and Mr Hamilton? Welcome to the committee. Perhaps you would tell us which one is which?

CANADIAN MEMORIAL SERVICES

Mr Hamilton: Thank you, Mr Chairman. We are pleased to be here to speak to you today. I am John Hamilton, the president of Canadian Memorial Services, and my colleague is Bob MacKinnon, who is our general manager. We want to speak to you today, partly to clear up any misconceptions which may have been created.

Like you, we have the interest of the public as our foremost goal in operating our nonprofit business. I will give you the history of Canadian Memorial Services, and Bob MacKinnon will follow with the operational aspects of our company. I will then conclude with what we believe are very important recommendations for changes to the bills. At the end, we will welcome your questions.

In the past, there was in the Toronto area an alternative service to the conventional funeral services. For a number of reasons, certainly not from lack of clientele, that operation went out of business. In Toronto Trust Cemeteries's view, however, there was a clear need for such a service to remain available. It wanted the public to be free to choose the type of service demanded, whether it be that offered by a conventional funeral establishment or a simple transfer service.

To fill that need, Toronto Trust assumed the liabilities of the former operation with respect to the prepaid and prearranged contracts and offered either to refund money or to guarantee, sometimes at a loss, the service needs of the clients. Ninety-nine per cent, or nearly 100 families, chose to continue their arrangements with Toronto Trust.

A transfer service such as this is a simple and dignified alternative where only the essential components are offered.

Toronto Trust was prepared to operate the transfer service as a simple ancillary to its own crematoria, but the Board of Funeral Services complained to the director of business practices that the method of operation was not allowed by the existing legislation. They contended that Toronto Trust was providing the transfer service and was also arranging services, with the body present, in crematorium chapels, some of which were operated by Toronto Trust. The argument was that Toronto Trust was therefore providing funeral services, and this was not allowed under the regulations under the Funeral Services Act.

Rather than pursue lengthy and costly legal proceedings, Toronto Trust Cemeteries therefore adopted the somewhat cosmetic procedure of incorporating a separate, nonshare capital, nonprofit corporation under the name of Canadian Memorial Services. This corporation does not have any directors in common with Toronto Trust, nor does Toronto Trust have any equity interest in it.

Canadian Memorial Services has made the appropriate filings to indicate that it is doing business under the name The Simple Alternative. That is the name by which it is known to the public and by which we will refer to it from now on.

The Simple Alternative rents its premises and has its own employees. It arranges for some administrative services on a contract basis. Through these arrangements, The Simple Alternative is conducting its operations in accordance with current legislation. Now I ask my colleague Bob MacKinnon to describe the services we offer.

Mr MacKinnon: The Simple Alternative offers a low-cost, dignified alternative to what is currently offered by traditional funeral establishments. In its simplest form, the service offered provides a meeting with the family to finalize arrangements for cremation or burial, removal from the place of death, preparation and delivery of all necessary documentation, provision of a simple container in lieu of a casket, transfer of the body to the crematorium or cemetery chosen by the family, and documentation for estate purposes.

This service is available in the Metropolitan Toronto area for a fee of \$429.

This service has the acceptance of the public. During the first four months of operation, The Simple Alternative entered into more than 250 at-need and pre-need contracts. At that rate, we forecast serving more than 750 families in the first year of operation.

The public expects a crematorium to be able to remove the body, transfer the body to the crematorium and carry out the cremation without the intervention of a third party. The crematoria operated by Toronto Trust Cemeteries receive about 1,000 requests each year from families who expect and want this service. We are also informed that St James' Cemetery and Crematorium in this city receives at least one call a day requesting the same service.

Unfortunately, no crematorium is permitted by law to offer such a service. We believe that this is wrong and The Simple Alternative now responds to this substantial public demand.

The fee, exclusive of such disbursements as the cremation fee and government fees, for the services provided by The Simple Alternative is \$429. A professional and independent survey of funeral homes in the Metropolitan Toronto area—the survey was conducted in April 1989—shows that the fee charged by funeral homes for the same service ranged from a low of \$585 to a high of \$2,385.

Interestingly, when the survey was being carried out all but one funeral home tried to encourage the inquirer to purchase a more expensive package. Why? Money. The major source of funeral home revenue is derived through the sale of merchandise such as caskets, burial vaults, cremation urns, etc.

The only source of transfer service revenue is service. There is no merchandise other than a simple container. Thus, the consumer has no reason to fear embarrassment or manipulation.

Transfer services do not offer accoutrements such as visitation suites, chapels, coffee lounges, hearses or limousines, the cost of which, whether employed or not, contribute to funeral home overhead and must be recouped.

We are not decrying traditional funeral service. We feel that those seeking traditional funeral service are well served by the funeral directors of Ontario. In fact, in discussing service expectations with families, we often refer them to traditional funeral providers. However, we do feel that those who want a simple service should have equal access to a service that is meaningful and consoling to them.

The reason the transfer service concept has wide acceptance is simple: The service offers the public a nonthreatening way to arrange death care options which reflect individuality and personal preference.

As the consumer becomes more familiar with the availability of death care alternatives, legislation and regulations which hamper the scope of service options will be viewed as contrary to the public interest.

Funeral directors want regulations to prevent transfer services from helping the consumer to arrange such services as death notices, commemorative services in a church or a crematorium chapel, memorial services, clergy participation and crematorium or cemetery services. These services, although readily available through the funeral home, are not the exclusive purview of funeral directors. Anyone can and should be able to access or arrange for services which are consoling and meaningful to them.

To limit transfer services in the manner proposed by funeral directors is a disservice to the public and an endorsement of the funeral directors' exclusive right to anything death-related. To legislate and regulate transfer services under the Funeral Directors and Establishments Act is tantamount to expecting a farmer to protect the hens by placing a fox in the chicken coop.

I wish to close my remarks by reading a letter we received on 22 September. It, more eloquently than I, describes our *raison d'être*:

"Dear Sir,

"Please find a cheque in payment for your services which I found to really be a simple alternative to ostentation and elevated costs.

"It was tastefully handled and I will be pleased to recommend the service to anyone needing it."

1440

Mr Hamilton: Our recommendations are as follows:

1. That transfer services be regulated under the Cemeteries Act. The public perception is that a transfer service is part of the services that should be—in many cases the public thinks they are—offered by a cemetery or crematorium.
2. If the first recommendation is not acceptable, then transfer services should be regulated by the director of business practices. It is entirely inappropriate to have them regulated by the Board of Funeral Services.
3. Transfer services should be allowed to offer whatever services are meaningful to the bereaved in order that the memorial process will be meaningful and consoling. They should be allowed to remove the deceased, transfer the body to the cemetery or crematorium of choice, arrange for memorial or other services, whether the body is present or not, place notices in the newspapers and generally assist the bereaved in all ways possible. Of course, embalming should be, and is, reserved to those operating funeral service establishments.
4. Transfer services should be permitted to operate in conjunction with cemeteries, crematoria and funeral service establishments. The public must be offered freedom of choice and therefore the simple, economical alternative must be made as widely available as possible.

The mission of The Simple Alternative is to serve and assist the public in time of need. The public wants these services and should not be deprived of them in order to serve the self-interest of any group.

We will be pleased to answer your questions.

Mr Tatham: I listened about The Simple Alternative and I noticed this quite astonishing dollar sign, up to \$2,385.

Mr MacKinnon: That is correct.

Mr Tatham: What do they charge for a regular service?

Mr MacKinnon: I am not prepared to answer that. I am prepared to answer what we asked the survey to indicate and that was for a service comparable to what we are providing.

Mr Tatham: Is this service available other than just in Metro?

Mr MacKinnon: Yes. I believe there are two services operating in Metro Toronto. I believe there is a service in Hamilton and a service in Thunder Bay.

Mr D. R. Cooke: You answered my question, I guess, in your recommendation 4. I take it you want to have conjunctive activity with cemeteries.

Mr Hamilton: Yes.

Mr D. R. Cooke: Your choice, I presume, would be Toronto Trust Cemeteries.

Mr Hamilton: Yes.

Mr D. R. Cooke: There is another simple alternative service in Toronto, you say?

Mr Hamilton: So I understand.

Mr D. R. Cooke: Can you tell us anything about them?

Mr MacKinnon: No, other than that it is available and is advertised in the newspaper. I believe it is advertised under the name Trillium Memorial Cremation Services.

Mr D. R. Cooke: You would receive referrals from Toronto Trust?

Mr MacKinnon: We have received referrals from numerous cemeteries and crematoriums.

Mr D. R. Cooke: Are you getting those referrals now?

Mr MacKinnon: From other cemeteries as well as Toronto Trust?

Mr D. R. Cooke: Yes.

Mr MacKinnon: Yes.

Mr D. R. Cooke: But you are also getting them from Toronto Trust Cemeteries?

Mr MacKinnon: I do not know that a referral is the proper way to describe it. What is happening is that people are making inquiries as to how they can obtain this type of service. Prior to direct cremation and burial and The Simple Alternative, the answer was that you must employ a funeral home. Now the question can be answered by saying you need to employ a funeral director or there is an alternative, and the alternative is this company or that company.

Mr D. R. Cooke: When you have a client who has not thought about where a burial is going to take place, how do you set out before him the choice of cemeteries?

Mr MacKinnon: I would initially ask him if there has been a burial in the family before, and if there has been, where it was? Is that cemetery in keeping with where they would like to go? What part of the city do they live in? If they indicate an area of the city that they live in, I would indicate the cemeteries that are there to serve them.

Mr D. R. Cooke: Do you have any figures on what percentage of your clients have been buried in Toronto Trust Cemeteries since you became separated from it?

Mr MacKinnon: First of all, burial is almost a nonentity with this service. I would say that 97 per cent of the clientele choose cremation.

Perhaps 15 per cent or 18 per cent have gone to crematoriums other than those of Toronto Trust Cemeteries.

Mr Haggerty: I have some difficulty following your train of thought in regard to The Simple Alternative. In your opening comments, it says, "The Simple Alternative offers a simple, low-cost, dignified alternative to what is currently offered by traditional funeral establishments."

Then you come over a couple of pages when you are dealing with transfer services and you go on to indicate that you want to be part of the business, I guess it would be, the same as what funeral services are providing. Then one of your recommendations is, "It is entirely inappropriate to have them regulated by the Board of Funeral Services." You seem to imply that you want to have the same opportunity to provide service as a funeral director, but still do not want to be regulated by the Board of Funeral Services.

Mr MacKinnon: No. Let me clarify that for you. What I am suggesting is that because some persons wish this type of service, which I believe is referred to in your Ontario Funeral Service Association brief as a disposal service, I do not feel those people should be limited simply to having the body picked up and transferred to a crematorium, having a container supplied and the documentation processed. If they wish to have a memorial service with the clergy present, I think they are entitled to that, and I think they are entitled to ask us to help them arrange that. If they wish to have a death notice placed in a newspaper, I think they are entitled to have that, and I think they are entitled to ask us to do that for them.

I do not view those as funeral director functions. You may place a death notice in the newspaper if you wish to do so. You, as a private citizen, can arrange for a clergyperson, and you, as a private individual, can transfer your mother by a moving company to church for a service if you wish. Although those are services that are provided by funeral homes, I do not consider them to be the exclusive purview of funeral directors.

I do not think that because some persons request a simple service, all they can do is have the body picked up, transferred, placed in a box and cremated. I think they are entitled to more than that if they wish it.

Mr Haggerty: But under the act, it is a burial service, and you have suggested that the director of business practices should be the prime—

Mr MacKinnon: No. We are saying that because what we are supplying is a not a funeral service, we do not feel we should be in the Funeral Services Act. We would probably best be in the Cemeteries Act, but at the very least, remove us from the purview of the Board of Funeral Services and put us under the business practices director, which more fairly reflects what we are doing.

1450

Mr Haggerty: I have difficulty in following that.

The other question I raised this morning to the Federation of Ontario Memorial Societies was the advertisement in the local paper that read:

"Finally...There is a Simple Alternative to the Funeral.

"A simple, low-cost, dignified alternative to traditional funeral service is now available. A fee of \$429 will provide for:

"A meeting with the family to complete the final arrangements."

I said to them: "That is not quite a true picture in the sense that there is an additional cost that follows that \$429. Cremation is one and some could choose to be buried in a grave site. There is the opening and closing of the grave." The question is, how much is it really costing a person to apply for your services?

Mr MacKinnon: In the city of Toronto, if you wish to choose cremation as the mode of disposition, the additional fees are \$226. That is \$190, at the most, for cremation, \$26 for a coroner and possibly \$10 for a death registration fee.

Mr Haggerty: So that is \$262.

Mr MacKinnon: It is \$226.

Mr Haggerty: Yes, \$226. I thought you said \$226 at the beginning and then \$26 and then \$10.

Mr MacKinnon: I said \$190, \$26 and \$10, all of which add up to \$226. I would like to see the ad because the most recent ads indicate at the bottom that there are additional charges, depending on whether you wish burial or cremation. That may be an old ad.

Mr Haggerty: I do not know whether it is or not, but it says that the \$429 is just a door opener for "a meeting with the family to complete the final arrangements."

Mr MacKinnon: No, it is not a door opener.

Mr Haggerty: That is my version of it.

Mr MacKinnon: Okay, but if a restaurant advertises that it has a lobster dinner for \$9.95.

Mr Haggerty: Plus tax.

Mr MacKinnon: Okay. Fine. I will give you the tax. Do they go on to indicate to you that coffee is extra and that your dessert will be extra? I think that goes without saying. However, that is a situation that has been posed to us by people who ask us for information. They say, "Does \$429 cover everything?" and the advertisements have been adjusted accordingly.

Mr Haggerty: But in your statement here—I believe it was raised by Mr Tatham—a low, I guess, would be \$585. No, that is funeral services from outside a funeral home, I guess, that ranges from \$585 to \$2,385.

Mr MacKinnon: Correct.

Mr Haggerty: So we can look here that there may be an additional cost in your service.

Mr MacKinnon: No, sir. All the items that are described in that advertisement—

Mr Haggerty: This is just a door opener, the \$429.

Mr MacKinnon: May I see the advertisement?

Mr Haggerty: This is "administered by Canadian Memorial Services nonprofit public service organization."

Mr MacKinnon: That is correct, but underneath the opener of the ad, read the items with the stars beside them that indicate what services are being provided.

The Chairman: Why do you not pass the ad to Mr MacKinnon?

Mr Haggerty: It does not say anything about what you are talking about and it should. It says further information is available by telephone.

Mr MacKinnon: It says that included in the \$429 is "a meeting with the family to complete the final arrangements; preparation and delivery of all necessary documentation; removal from the place of death; a simple container in lieu of a more expensive casket; and transportation to the crematorium or cemetery of your choice." All those items are for \$429. That is it.

Mr Haggerty: That is not what was said by the other group. They said that—

Mr MacKinnon: Well, sir, I am sorry. I am not the other group and there is the advertisement.

Mr Haggerty: It is part of your association. They said that there were cremation costs.

Mr MacKinnon: That is not our association. We have nothing to do with the memorial society. We are not the memorial society.

The Chairman: I am sorry to interrupt, Mr Haggerty. I wonder if, when these gentlemen are finished their presentation, you could have a conversation with them out in the hallway. You can really buttonhole them and press your point more aggressively.

Mr Haggerty: It is just a question of further clarification.

The Chairman: Can we move on?

Mrs Cunningham: I am going to the third page. I just want an explanation here. You say, "A transfer service is a simple and dignified alternative where only the essential components are offered." So it is an alternative. I am a little bit confused and so my question is, do you provide a service that existing funeral homes do not or cannot provide now?

Mr MacKinnon: No. The message I gave is that that service is available from funeral homes. That is not traditional funeral service and that is the service that was priced from \$585 to \$2,385, the same service.

Mrs Cunningham: But you can get the basic service you provide for

\$429 from a competing funeral home if you want to shop around a little bit and find out what is offered.

Mr MacKinnon: Yes.

Mr Hamilton: At that different range of prices.

Mrs Cunningham: Yes, as you suggested, where you did your research, which I appreciate. You are asking us here to regulate your service under the Cemeteries Act as something that is separate or different, so I have to distinguish whether it is separate or different or why it cannot just fit the way it is now.

Now, if I am incorrect, just correct me: You are a nonprofit group?

Mr Hamilton: Correct.

Mrs Cunningham: I think I am known by all of the people in this room as having asked in other deliberations what "nonprofit" means. I do not happen to know what it means any more. My work is with nonprofit child care as opposed to commercial child care, where we now tell the commercial child care operators that they have to open their books or we are not giving them any grants, or they have to open their books or they are paying taxes. Do you open your books?

Mr Hamilton: They are available to anyone who wants to look at them.

Mrs Cunningham: Do you pay any taxes?

Mr Hamilton: I hope not.

Mrs Cunningham: You are not alone, by the way, in your response to the question. I am just trying to find out what is different here. Okay; then you are truly nonprofit.

Mr Hamilton: Yes.

Mrs Cunningham: You can provide those services and you advertise in the way my colleague Mr Haggerty suggested.

Mr Hamilton: Correct.

Mrs Cunningham: That was in the Globe and Mail newspaper. Is that basically how you advertise your services?

Mr MacKinnon: Yes.

Mrs Cunningham: Remember, this committee really started its work because people do not want solicitors ringing up on their telephones.

Mr MacKinnon: Do we telephone people?

Mrs Cunningham: No, I would guess you would not. I would not think anybody would after these hearings started or very much before. They knew I would ask them. Actually, I believe the public should receive every kind of information they can, but they have told us they do not like telephone calls. That is why we are looking at this whole bill.

Since I do a lot of things in the nonprofit sector myself, do you know what I am really curious about? How can you afford these ads? I am really ticked off at my local newspaper, which is the London Free Press, because it charges nonprofit groups a lot of money to advertise. How do you afford to do that and offer this price and still consider yourselves somewhat competitive?

Mr MacKinnon: First, it will definitely be nonprofit for the first year, whether it wishes to be or whether it does not wish to be, because it will not turn a profit. The manner in which the business will be operated will be as a result of volume. As for the advertisements that are running currently, we have only been in business since 23 May and you have to establish and get your name out in front of the public. That is the only way we can do it at the moment. But as we serve people, then word of mouth goes on from there or a memorial society says, "You may get this service from these people." Until that time, unfortunately, we must rely on advertising like that.

Mrs Cunningham: On the third page, these are your words so I am asking—I have to be able to explain questions I get back to the public I represent. You have used this word at the bottom of the page. You say, "Rather than pursue lengthy and costly legal proceedings,"—with due respect to the solicitors, we all try to avoid those—"Toronto Trust therefore adopted the cosmetic procedure of incorporating a separate nonshare capital nonprofit corporation under the name of Canadian Memorial Services."

You use the word "cosmetic" there. I am not sure what you mean by that because I must say that when you say this corporation does not have any directors in common with Toronto Trust Cemeteries, nor does Toronto Trust have any equity in it—I do not know about the equity part and I am not particularly interested; I will just take your word for it—having directors in common does not excite me. So what? We want to know you are distinct, right? Is that not what we are trying to find out? You have no money in it and you have no common directors, but you say you use this cosmetic procedure. What does it mean?

1500

Mr Hamilton: If I may attempt to answer that, Toronto Trust Cemeteries wished to operate the transfer service as part of its operations. In order to satisfy the complaint made by the Board of Funeral Services it was necessary to incorporate a separate corporation which has its own payroll and carries on its own financial arrangements.

"Cosmetic" may have been a less than entirely suitable word, but it was done only because of the reason of the complaint. It was not done for any particular business reasons. In order to satisfy the complaint made, it was done and it is a separate corporation with separate directors, separate bank accounts and all the rest of it. But it was—

The Chairman: I am sorry, we are completely out of time. Mrs Cunningham, I want to give the other party one chance for a short question.

Mrs Cunningham: We will ask our other one afterwards, but you can imagine what it was going to be.

The Chairman: Mr Farnan, do you have a short question?

Mr Farnan: It is fairly short. The funeral service has to provide a lot of different services beyond what you are providing. To some extent, it

might be viewed that you are creaming off a service that is the simpler part of the overall picture. Would it be fair to say that your expansion in this market actually hurts the small or the independent funeral home?

Mr MacKinnon: The terminology in the Ontario Funeral Service Association brief is "disposal." I do not know what your concept of disposal is, but I do not think it is a good term. It is not funeral business that the average funeral director would like to build his business upon. It is a service that you may get, but I would suggest that with prices from \$585 to \$2,385 you have to be pretty well informed in order to go and get the service. I do not think that serves the consumer very well.

Mr Farnan: Under this present act there would be an obligation on the funeral home to list the price of the basic service.

Mr MacKinnon: Fine. Does that mean that the service will go down in price? The funeral director has to tell the public if they go in now and say, "I want to arrange a simple disposition. How much will it cost?"

Mr Farnan: I suppose the funeral home could say that seeing it is paying taxes, there will obviously be a difference in price to someone who is not paying taxes. I think there is a justifiable logic in that.

Mr MacKinnon: We are not arguing that. As I explained in my brief, there are a lot of resources available in a funeral home that are not resources that we provide. That is why the price is what it is.

Mr Farnan: How would you feel about levelling the playing field and you paying taxes and then offering that service?

Mr MacKinnon: I am prepared to discuss it. I do not have a difficulty with that at all.

Mr Farnan: That is very good. That is a very honest answer. Thank you.

The Chairman: I think there are a number of people who still want to have discussions with you. If you gentlemen are going to be available afterwards, there may be some members—

Mr Dietsch: There is an important question, Mr Chairman, for the record and that is in terms of page 5 of the presentation under the operations. It lists a number of operations that vary: A meeting with the family, the burial and so on. At the bottom of that list of seven points it indicates that the service is available for \$429, which is very different from the way the gentlemen were answering Mr Haggerty's question.

I would like to know which way is correct. Is it the way that it is presented in the brief or is it the way that you answered Mr Haggerty's question?

Mr MacKinnon: To the best of my knowledge, what is in the brief is the same as what is in the ad.

Mr Dietsch: I am sorry, if I might just take one second, Mr Chairman. It says The Simple Alternative provides a meeting with the family,

the burial or cremation, removal of the body, preparation and delivery, provision of a simple container—

Mr MacKinnon: If it says a meeting with the family and the burial or cremation, then that is a typo.

Mr Hamilton: With respect, it says in the brief, "a meeting with the family to finalize arrangements for the burial or cremation." That is one point.

Mr Dietsch: So what you are saying is, it is the same thing. The provision of the containers, that is all the same; that is what you are saying. I interpreted your answer to be somewhat different.

Mr Haggerty: It will cost \$26 more.

Mr Dietsch: We will have to review the Hansard to find out if that is correct.

The Chairman: I also have Miss Martel, Mr Pelissero and Mr Tatham on the list, but if you insist on going, since I have allowed it to go over—are you prepared to let it go? Okay.

Thank you very much, gentlemen, for your presentation. Those gentlemen did indicate that they were available for further discussion if anyone wanted to pursue them into the hall.

The next presentation is from Steeles College Memorial Chapel. Are Messrs Donsky and Gold here?

STEELES COLLEGE MEMORIAL CHAPEL

Mr Gold: Good day, Mr Chairman. My name is Herschel Gold. Mr Donsky appears to my immediate right and Kenneth Bodenstein, who is a general director of Steeles College, is also seated at the table.

The Chairman: Thank you. There is no written presentation for this one.

Mr Gold: I appreciate that.

The Chairman: Okay.

Mr Gold: My remarks, hopefully, shall be brief. First, Mr Chairman, ladies and gentlemen of the committee, let me say to you that we appreciate your kind offer for us to present our views with respect to the proposed new legislation. I believe a brief outline as to the somewhat unique institution that is Steeles College would be of benefit, in order for you to understand better the past origins, hopefully where we are going and the possible impact of the proposed legislation.

Steeles College is an organization with a long history. It was originally named the United Hebrew Burial Society of Ontario. It obtained letters patent on 30 June 1927, and its objects were basically to prepare and conduct funerals among members of the Jewish community and of the Jewish faith according to Hebrew rites.

In 1944, there was a name change to the Hebrew Funeral Parlour of Ontario. Supplementary letters patent in 1955 changed it to College Memorial Chapel, and in April 1985, the current name was obtained for Steeles College Memorial Chapel. The objects were substituted in that year to read:

"To prepare and conduct funeral services in accordance with Halachah precepts, the request of or for members of the corporation and members of Jewish congregations or organizations which are members of the corporation."

Steeles College was created by a number of various burial societies, organizations and congregations or synagogues. There are currently approximately 65 benevolent associations, congregations and synagogues affiliated with Steeles College. Our organization thus has a number of unique qualities to differentiate it from the more usual type of funeral home establishment.

We are basically at the apex of a number of organizations that comprise and co-ordinate this enterprise. The executive is elected by delegates from these burial societies and synagogues. There are elections. The board of directors of Steeles College is composed of an honorary board: no payment, no compensation for the elected members of the board. On the board, pursuant to the Funeral Services Act, Christopher Brown, who is the licensed funeral director, sits. He is the only person on the board who is paid other than any other fellow employees.

The goal of Steeles College is basically a nonprofit type. Any moneys that are accumulated, according to its objects, are to be used for the purposes and objects, and charitable donations are yearly being made in ever-increasing amounts to a number of charities both here and abroad. Some of those, I should add, are nondenominational. They do also provide moneys to hospitals of various denominations.

1510

What is strictly adhered to is the running of this institution in accordance with its original mandate that everything be done in strict compliance to the Hebrew rites and traditions. Obviously the community being catered to is the Jewish community. Over the years, a number of problems have arisen in fitting this fairly unique type of organization into the more normal mould, and there are two areas of concern that I wish to address to you.

The first is with respect to the licensing requirements. I note that the explanatory notes of the bill that I have seen, Bill 30, talk about two forms of licensing, "A funeral director in one of two categories, those who perform embalming and those who choose not to perform embalming." This is of major concern. I do not see the actual wording of that licence within the legislation itself.

In the past, those requirements of licensing which required courses in cremation, embalming, visitation or flowers were basically and wholly irrelevant for the purposes of running a Jewish funeral home. Jewish tradition is quite different, as you can appreciate, from the Christian faith in that we do not believe in embalming, we do not believe in cremation and we do not permit a body to lie in state.

A body, under the Jewish faith, has to be buried within 24 hours or as soon thereafter as is humanly possible. Flowers are forbidden. Instead of the normal dressings that one would expect when a body lies in state, Jewish

bodies are put into a shroud and buried in a simple form, but one that is in accordance with Jewish traditions. Instead of visitation, for example, there is a period of mourning called a shiva, where the grieved family would go to the home and be visited by friends who express their condolences in the person's home.

We seek some clarity with respect to the absence of the actual terminology in the legislation as to the licences, the two hybrids that are being suggested in the explanatory notes. We also are suggesting and recommending that perhaps a special licence to permit a designate should be considered for a particular institution for religious reasons.

We submit that he should be an individual who is totally familiar and comfortable in the knowledge of the rites of the religion and has been approved by the various religious leaders in the community. One has to also realize that there are difficulties of language. For example, in a number of the strictly orthodox funerals the language could be Hebrew or it could be the Yiddish, which came from the European background, and so a director would have to have knowledge in those languages as well.

We had tried in the past to get a special designation for a special licence, supported by a rabbi's documentation. However, the licensing committee did not look favourably upon that. We think that was done in an unfair manner. The need is great, and unfortunately religious Jewish persons have been discouraged by the previous preconditions from going on these courses because (1) they would be useless or irrelevant and (2) in many instances, if they were Orthodox, the preconditions would be an anathema to their traditions and views.

There is a dearth of Jewish persons, religious or not, in the system who would be available to assist. Steeles College, catering as it does to the whole Jewish religious spectrum, has had to adjust and make adjustments to the law in a number of ways. For example, when an orthodox person dies he cannot be touched by a non-Jewish person. To do that would render the death unclean or nonkosher. When you have a funeral director who is Christian, for him to touch the body would render the death contrary to the deceased's religious traditions, so a physical and moral dilemma occurs.

According to the act, we may have to have a funeral director who cannot touch the body. In some instances with very religious Orthodox rabbis, they will not even discuss with a non-Jewish funeral director the conditions of the burial of a very religious person. They will not even allow him into the room. This is where the religious aspect invades into the secular. In the past, we have had to have our managing director intercede and speak to the rabbis in order for the arrangements to be made. This is a practical problem.

As I have indicated, the new bill seems to eliminate the need for embalming, but with all due respect, it does not go far enough with respect to this unique situation. It is my submission that if it can be sufficiently demonstrated that a special licence should be granted for religious reasons, exceptions should be made.

I note subsection 19(12) of the act talks about the licensing, about the students, and that seems to be directly designed to counter the Divisional Court decision in *Regina v O'Connor*, which was a Board of Funeral Services decision of May 1987, wherein it was held that persons not licensed as funeral directors may perform funeral services under the direction of a licensed funeral director. If so, it respectfully, in my opinion, is moving in the wrong direction when one considers the religious context.

The overall purpose of the prior act, according to the honourable justices Fitzgerald and Gowan at the suit of Regina, which I am sure you are familiar with, was threefold: (1) it created a specific occupation or profession and provided for the setting of standards required for licensing to practice that occupation; (2) it set up the regulatory and disciplinary machinery permitting that occupation to operate in the manner of a self-governing profession; (3) it attempted to define the limits within which the licensees are to have exclusive rights to serve the public. It created a monopoly to ensure that the public interest may be served and protected. Clearly that is the mandate and why the legislation or the predecessor was, to protect the public interest. It is clearly also a derogation of the old common law principle.

The proposed new legislation carries on this monopoly. As pointed out by the learned judge at page 26 of his decision—and it is an unreported decision—there are cases, of course, where membership in a group can remove the person from membership in the general public. He held in that particular case that the Funeral Services Act, in its regulatory and penal aspects, is intended to protect every member of the public from incompetent and unethical conduct of persons holding themselves out as providing funeral services. The Court of Appeal of Ontario, in an unreported decision, in dismissing the appeal, held that the court was not to be taken as necessarily agreeing in his determination that membership in a co-operative does not remove the member from being part of the public as defined in subsection 5(1) of the act.

I submit that in recognizing that there are innate religious practices, not only of the Jewish community but of other communities, there should be grounds for designating special licences, because to a large extent that serves the best interests of that particular religious community. I submit that greater recognition and tolerance should be provided in clear and cogent language to effectuate that reality. It is clear that religious tolerance and freedoms, reinforced by the Charter of Rights, have to be recognized and should be done in clear and unambiguous terminology.

1520

I am not certain, in reviewing this act, in particular section 29, which deals with place of worship—I will read you this section. It says, "A licence is not required with respect to rites and ceremonies traditionally provided at a place of worship." Does this mean, for example, that in Steeles College, where the concept is to have these funeral services in accordance with Jewish traditions, and it goes beyond necessarily what would occur in a place of worship, that that is covered; that our institution, for example, should not be licensed? I do not know. I am just indicating that I do not think so. That is not how I originally read it, but it is somewhat confusing. There should be certain exceptions for religious practices unique to a religious group.

I am also concerned—and this is a concern under both the Cemeteries Act and Bill 30—given the peculiar nature of our organization, as to whether we have a potential or real conflict of interest. As I indicated to you at the beginning, the organization is basically composed of all these burial societies or cemeteries, and synagogues, many of which own cemeteries. They have the plots.

Delegates are appointed from these various burial societies or organizations or they are elected. To a general meeting of Steeles College, which is held, I believe, annually or every second year, these delegates come and vote among themselves for people who should go on the board at Steeles

College. As I indicated to you previously, it is basically an honorary position. Nobody gets paid for that. It is a democratic type of system where they vote these people as members of the board. But some of these members who are elected to the board may also be sitting on a burial society which owns a cemetery.

From my reading of the legislation, section 45 of the Cemeteries Act and its reverse, section 39 of the Funeral Directors and Establishments Act—which are basically the inverse situations—would seem to eliminate that: "No owner shall carry on business, in a manner prescribed, in conjunction with a person licensed to operate a funeral establishment or transfer service." We have a real problem with that. We need your guidance now as to what can be done so that there is no conflict. Either an exception in this situation because it is so unique or some guidance in that regard would be requested.

Our organization has consistently and vigorously defended the rights of bereaved families to choose what funeral establishment they wish to go to. In Toronto, there happen to be only two Jewish funeral homes. We believe in the principle of freedom of choice, which I heard other delegates talking about. We recognize and encourage freedom of choice. Our organization delegates do remind their memberships that they are affiliated to Steeles College, but we also encourage the individual associations and congregations never to try to dissuade anyone from going to any other source they wish, if that is the family wish. In fact, a number of our group members do go elsewhere.

We have complained in the past to the registrar of funeral services and expressed concern that on a number of occasions a family's choice of preference to have the service conducted by our chapel was denied by certain cemetery property chairmen. This, it is trite to say, cannot be tolerated, now or in the future. The legislation should reflect this and address that concern directly.

Mr McCoy, a representative of the Ministry of Consumer and Commercial Relations, in a letter of 13 December 1975 in response to our concern, reiterated in correspondence directed to a number of these property chairmen we were complaining about, "The choice of a funeral director to conduct a funeral to any cemetery is entirely and solely the prerogative of the family involved." That may sound trite, but it required reminding a number of cemeteries that that is in fact and should be inherent law. That should perhaps be clearly set out.

I appreciate that you have an arduous chore, and drafting good legislation is sometimes more of an art. I wish you well in your endeavours to do so.

Mr Wiseman: You made some good points. It was very interesting. The first concern I believe you had was licensing, and I know your faith does not approve of embalming and that. But under the new legislation, there are two licences, are there not: one for an embalmer and one that is nonembalming?

Mr Gold: I have not seen the regulations, but I did not see that in the legislation itself. I see that in explanatory notes but in the legislation, in section 19 on licences, I do not see it broken down.

Mr Wiseman: I believe that is the way it is, that there will be two licences in future, one for embalming and one for nonembalmers.

Mr Haggerty: By choice.

Mr Wiseman: By choice. I just wondered if that would not get around some of the problems you are talking about.

Mr Gold: I think it gets around some of the problems, but there are other things—for example, the cremations, the flowers, the visitations; those are other courses that would normally be taught. I am just saying there are other exceptions that for Jewish purposes—and I am sure for other religious groups, but I am not talking about those groups—may or may not fall within their particular ambit.

It would also be, obviously, the situation that if someone takes a restricted licence or one of these other licences for a specific reason dealing, for example, with no embalming, no cremation, no flowers, he would be restricted basically to a Jewish funeral home. That would be clear, because if he went to another one, he might have to go through those courses.

Mr Wiseman: You mentioned that there are only two Jewish ones in the city. If you restrict it so that the Jewish person who is going into that can only deal with Jewish people, it may not be feasible to get many more than the two you have now. If they could work it both ways, can you be buried from that—you would not be buried from it, because the body has to be in the ground within 24 hours of the death, does it not? But could he look after the funeral arrangements if he were doing the two types?

Mr Gold: You cannot do two types in a Jewish funeral home.

Mr Wiseman: You would be limited just to Jewish funerals?

Mr Gold: You are limited solely to dealing with the Jewish. In fact, there would be a tainting, I think. A Jewish funeral home, by definition, can only cater to the Jewish community.

Mr Wiseman: We heard yesterday, I believe, from a Jewish cemetery that they look down the road at about 90,000 people being their catchment area; now they are figuring there are 150,000 in the Toronto area. I have no idea how many people it takes to support one funeral home, but many towns are supporting a couple of funeral homes with 10,000 in the surrounding district.

Would you not try to encourage more people to take the course? Would that not eliminate a lot of the problems? I know when it comes to burials, they will probably want to be buried in a Jewish burial ground, because of the different groupings within your religious belief.

Mr Gold: That is why I am saying it is an encouraging sign that the legislation seems to be trying to recognize the difference, but it does not go far enough, in my respectful submission. It only talks about embalming. There are other unique situations in a Jewish funeral home. We are looking at it that we would want perhaps a restricted special licence for someone just to work in this particular Jewish home, to enable us to overcome some of these difficulties and to encourage young Jewish persons to come into this field. There are not that many; I think maybe one or two. I know there is Michael Benjamin and maybe one other in the whole city of Toronto.

1530

Mr Wiseman: Is there anything within the Jewish religion, if the person did go to Humber College or whoever gives the course on becoming an undertaker—I am not sure who it is—and they took the full course rather

than—If I put it the other way, if they eliminated the embalming part of the course, is there anything restricting them from being a Jewish undertaker as far as the religious beliefs are concerned?

Mr Gold: I do not believe so.

Interjection.

Mr Gold: He is saying that if they do not have to take those courses—

Mr Wiseman: Just the embalming part of it, you mean?

Mr Gold: Embalming, cremation, the flowers, visitation. Those have nothing—

Mr Wiseman: But if he took those, and when he finished he only did what your religious beliefs require.

Mr Gold: That would be fine, but I do not—

Mr Wiseman: Taking them would not put them out of—

The Chairman: Would you allow a brief supplementary?

Mr Wiseman: Sure.

Miss Martel: On a number of occasions you have talked about a special licence. Is this what you are saying, that in fact for Steeles you are looking for a licence which would say you do not really have to have a funeral director per se, just someone who can carry out portions of what a funeral service would be for a Jewish person, not a licensed funeral director?

Mr Gold: Yes. We are saying we would prefer, as long as it can be substantiated by religious leaders, some orthodox or rabbinical sources, that the person they were going to deal with is capable of doing a funeral within the meaning of the religious rites of Halachah, which is the Jewish funeral tradition rites.

Miss Martel: Let me just carry on, if I might. Given that, what type of, I guess the best word is regulating mechanism, would be put into place to monitor what is happening? I appreciate that you have said that person is there because he has been chosen by the religious leaders in the community. However, I think that even I would have some difficulty with knowing they may not be beholden to anyone else except leaders within the community. How do we deal with regulating or having a mechanism where people can lay complaints, etc?

Mr Gold: Very simply: He has a licence. You have a provisional licence to drive. It could be a special designation, it could be a restricted licence of some sort, so you would still have your control over that licence. If there are complaints registered about this particular individual, he is still perhaps within the ambit of the act.

Mr D. R. Cooke: I have a very short question. What do Jewish people do outside of Metro for a funeral?

Mr Gold: That is a good question. I do not know what they do.

Mr D. R. Cooke: Do they come to you?

Mr Donsky: Some do. The odd one comes to us, but most of them have a Jewish religious body that would go into a non-Jewish chapel and perform that section where Jewish rites would be performed. I think in Ottawa they have a case where they have a special licensee where that can be performed. What we are asking—for instance, our general manager has been there, he has the experience, he has the knowhow, he is very friendly with our very orthodox rabbinical council. If he would only have a licence, as long as he works for Steeles, because we do a lot of orthodox funerals, he could supply the Halachic laws to the rabbis who come in with their clients, because most rabbis will not go into our showroom for caskets because they feel a non-Jewish man tells them how to conduct services. That is not quite what he wants.

But we do not have any Jewish funeral directors; very few of them. We have tried to sponsor several Jewish boys to go to Humber College. The minute they go there, they realize they are going to come back to us; they do not need cremation, they do not need all that, and most of them do not even want to take those courses. So we are always left with no funeral directors as such.

Mr D. R. Cooke: I am wondering if Mr Gold could provide us with copies of the—

Mr Gold: The two decisions?

Mr D. R. Cooke: Yes.

The Chairman: Thank you very much for your presentation this afternoon.

Mr Gold: Thank you.

The Chairman: The next presentation is from Nelson Monuments, Garth Nelson. Mr Nelson, if you would take your place and make yourself comfortable we can proceed.

NELSON MONUMENTS LTD

Mr Nelson: Members of the committee and ladies and gentlemen, my name is Garth Nelson. I am from Kitchener, Ontario, and I am the shareholder and owner of several companies, all of which are related or directly involved with the memorial or cemetery industries. Some of the companies include Nelson Monuments Ltd, Twilight Memorials, Prestige Memorials, the Stone Centre, Standard Memorials, Granitex, the Granite Exchange and Evergreen Memorial Park.

We are engaged primarily in the sale and manufacture of granite monuments and products. However, we do own a small cemetery. The Nelson family is the largest retailer of monuments in Canada. We also supply on a wholesale basis a variety of services, ranging from rough granite to completed lettered monuments, finished and delivered to the monument dealers—some of whom we compete with—and to cemeteries; and retail through funeral homes and a network of dealers, independent agents and commissioned salespeople. We have operated in Ontario on a wholesale basis for eight years, and on a retail basis for six years. We currently supply approximately 10 per cent of the memorials sold in Ontario. Our sales policy has been to supply anyone who pays their bills, and on a wholesale basis the same but also that they do not trade on our name.

We belong to several associations, both in Canada and the United States, including the Monument Builders of North America—which is not the same as the Ontario Monument Builders Association, OMBA, which we are not a member of—the Atlantic Monument Builders Association, Western Granite Producers Association, the Ontario Association of Cemeteries, the Ontario Funeral Service Association, the Canadian Funeral Supply Association, the Canadian Funeral Tradeshow Association, etc.

I would like to raise the following concerns, questions and suggestions regarding the new Cemeteries Act. I am not in any way intending to belittle, berate or offend anyone; I am simply here to present the following concerns regarding the new act.

Under your "Consumer Protection" heading, you have door-to-door and telephone solicitation, which you are trying to outlaw. I do not see that door-to-door solicitation is really an issue, because there is so little of it being done. It is fast fading in popularity. It really does not work that well. I think telephone solicitation is the same thing, but it is more cost-effective and more people use it than door-to-door.

The Chairman: Could I interrupt you for a moment? I am sorry, I do not like to do that, but members of the committee are having difficulty hearing you. I wonder if you could try to speak a little louder.

Mr Nelson: What I feel you are trying to address is aggressive selling. The cause of aggressive selling is usually the commission paid to the salesperson for selling the product. In the case of the memorial industry, some of those commissions have gotten out of hand. If you were to regulate the amount of commission paid to a salesperson, you will have far better luck regulating the aggressiveness used. The higher the commission, the more aggressive the sales can be. A good salesman will work harder with a family even though it is a high commission. If it is a high commission, some people will resort to ruthlessness. It happens in every industry.

One of my concerns is your cancellation of pre-need contracts. In the act it states that all pre-need contracts may be cancelled at any time prior to the actual provision of the goods and services. It also says that if the contract is cancelled within 30 days of signing there will be no administration fees charged. This recommendation causes me great concern. When people purchase a cemetery lot, in many cases they have also made arrangements for funeral services on a pre-need basis and also for the pre-need monument to be placed for future use on the pre-need cemetery lot. Monuments are custom-made products that are made to each individual family's requirements. By the time the 30 days are past, we will already have done a considerable amount of work, with considerable financial outlay on our part. Waiting 30 days to start production is neither possible nor feasible. It is just not going to work. The time requirements people put on you to have the memorial installed will not allow you to wait the 30 days.

The public is already used to the 48-hour cooling-off period that the Consumer Protection Act gives for itinerant selling. Forty-eight hours is time enough for someone to consider the purchase of the memorial they have bought, and it is also about the same amount of time it takes for the average monument company to clear an order from their office and get the granite on order. If a customer cancels a contract, we have to be able to collect on the work we have done to that point. If you give them 30 days, we will already have started, or in many cases finished, a memorial.

Fair business practices: The accepting or paying of commissions for referral selling. The accepting or paying of commissions for referral selling will be prohibited under the new act unless the consumer is advised in writing of the practice. I agree with what you are trying to do there, but I see no way to enforce that. I can think of a few ways around it if anyone was so inclined. I do not see any possible way you can make that stick.

1540

Public safety: The new act makes the owners responsible for the maintenance of the monuments. Unstable monuments can be repaired, removed or moved to a different location by the cemetery. No one is going to argue that there are not unsafe monuments out there, and they need to either be taken down or made safe, but if that is done all at once in a short period of time, there are not enough people out there who know how to do it and can do it safely. You are going to get quite a number of cemetery employees either hurt or killed if cemeteries are made to do it all in one fell swoop. I think some cemeteries have one or two unsafe monuments. Others have hundreds, and they may have to be given an extension of time to accomplish this. A number of men who know how and are available already have full-time work and are not looking for more of this type of work.

Construction and installation standards will be provided for in the new act. I feel the recommendations you are using have been made mostly from Toronto and are too Toronto-based. The elimination of six-inch tablets is too severe and affects the northern area too much. A six-inch tablet can be safely installed if it is kept to proper proportions and height requirements and is installed properly. You may wish to introduce regulations that regulate what the tipping strength of the memorial has to be. Within the regulations as they stand now, you can still make an unsafe monument, or you can make a safe monument. That is up to the individual making the monument. I do not feel eliminating six-inch tablets is going to help.

Trust accounts: The fact that funeral homes and cemeteries are allowed to hold moneys in trust is one of the few areas where a traditional monument dealer is not, and cannot get, on equal footing. If I, as a monument seller, sell a monument to a family, I have to install that monument on the grave site within a reasonable production time, whereas if a funeral home or a cemetery sells the same memorial they can hold the moneys in trust and provide the memorial at a later time. This is a service I cannot offer to my clients.

In conclusion, I would like to tell you at this time that I personally am neither for nor against cemeteries selling memorials or related products. I have no fear of my abilities to compete with the cemeteries or anyone else who wants to sell monuments. My main concern is that the regulations are to be made fair, realistic and workable for the people who actually have to work within them. I am also very concerned about who will be given the power to decide on, enforce and regulate what will be allowable business practices.

Personally, I have found the Ontario Association of Cemeteries to be a group of genuinely well-meaning individuals. Many work hard and for the best results of their industry and keeping the public good in mind. The Ontario Monument Builders Association, OMBA, on the other hand, is an organization which, with its current slate of officers and present goals, is headed on a course that can only harm the retail monument industry as a whole and ultimately the real manufacturers of monuments as well. I would like to point out that the OMBA does not represent this company, and many granite quarriers, manufacturers and retailers are not represented by them.

In addition to the more often-stated concerns, as a real monument manufacturer I would like to make you aware that the changes within the Cemeteries Act will affect a large number of businesses that are directly related to the industry. In addition, the actual manufacturers have already made plans for production in 1990 based on previous years' sales and experience, and in many cases the inventory of production is already started. There is already granite in production for next year. If you do make severe changes to the act and do not give us time to change, there will be quite a financial loss to some people. I feel that phasing it in over two years would be appropriate.

Thank you for your time. If you have any questions, please ask.

The Chairman: Thank you, Mr Nelson. Yes, there are some questions.

Mr D. R. Cooke: This is a very helpful presentation. You have left a couple of things dangling in my own mind, though. You pinpoint commissions as being the root of the problem or a root of the problem of aggressive selling. What should we do about it? Should we abolish it?

Mr Nelson: No, what you need to do is regulate it. Take a person whose total income is from sales of memorials. His total income for the year should not exceed a certain percentage of the total sales; 10 per cent to 15 per cent would be reasonable.

Mr D. R. Cooke: Run that past me again. If a man is a salesman for
a—

Mr Nelson: If he sells \$250,000 worth of product in a year, his total salary should not exceed 10 per cent to 15 per cent of that, if his only source of income is selling memorials.

Mr D. R. Cooke: The net result would be that only 10 per cent to 15 per cent of a given stone would go to his commission.

Mr Nelson: Right. Currently, his commission rates are much higher than that, as high as 35 per cent for some companies. Other companies are working on overage. Are you familiar with that term?

Mr D. R. Cooke: No.

Mr Nelson: What that means is if Mr Cooke owned a monument company, he would say to his sales people: "I want \$1,000 for this monument. Anything you get over that is yours."

Mr D. R. Cooke: We heard an example a little earlier about a reduction in—Mr Tatham had an example of a reduction of the cost of a stone by about \$1,000 when some problems occurred, so that was gravy.

Mr Nelson: Right.

Mr D. R. Cooke: That would be a little difficult to administer, though; us going into a situation with a memorial company and with the individual income of each sales person. Really, that is what you are asking us to do.

Mr Nelson: Right. It would work.

Mr D. R. Cooke: It would work? Some of us are a little concerned what you mean by a six-inch slab. A lot of Mennonite graves in our area are like that. Is that what you mean?

Mr Nelson: Yes, the standing tablet. One of the recommendations that has been made to that a tablet should have a minimum thickness of eight inches. That is what the regulations are in Toronto. The Toronto people believe in those regulations and they are right: An eight-inch tablet is more stable than a six-inch. A 12-inch tablet is more stable than an eight inch, but you are getting into an expensive memorial and I do not believe in some areas—there are some areas in Ontario where four-inch tablets are still being used.

Mr D. R. Cooke: Rather than set rules like that, would it be preferable if we utilized a building code?

Mr Nelson: Yes, something to say that it has to withstand a certain number of pounds of pressure, sideways pressure, forward tip.

Mr D. R. Cooke: Finally, on page 5, you speak of the advantage that cemeteries and funeral homes have over you because they can hold moneys in trust. I guess what we are proposing would not permit you to hold moneys in trust.

Mr Nelson: There is no monument company at present that I know of that has trust accounts. I do not think really you can even set them up. I have never checked into it because trust accounts are a nightmare that I did not want to get into.

Mr D. R. Cooke: -You do not necessarily want to do it then?

Mr Nelson: No, but we have people who are selling product and then not providing it until such time and holding the moneys in trust. It is one of the few areas where we are not on an equal footing with the cemeteries and funeral homes, but it is not really a big problem at present.

Mr D. R. Cooke: To put you on an equal footing, we either have to make sure you have the right to do it or take away their right.

Mr Nelson: Yes.

Mr D. R. Cooke: I take it if we gave you—you are not sure whether you have the right and I am not sure at the moment.

Mr Nelson: I do not think I do.

Mr D. R. Cooke: Thank you.

Mr Farnan: I also found the presentation extremely interesting. I have just one question. Maybe it is a matter of clarifying this for me, Garth. It is on page 6, your final point. Could you explain to me in a little bit more detail the second to last paragraph there about the difficulties in assessing production over the next two years, and retooling and so on.

1550

Mr Nelson: Okay. Right at present there are quarriers that are quarrying blocks for next year. They already have their ledges figured out,

they have what we call their burns or their blasts figured and they are quarrying blocks, having figured on selling a certain number of six-inch slabs. You change all the regulations in Ontario saying that everything has to be eight-inch, there are going to be a lot of products sitting in those yards that are either going to have a lot of wastage in them, or that have already been sawed and are going to have to sit until they can use them up in other areas.

You are asking people to sustain a financial loss for a period of up to—some people would have two or three years' supply of six-inch slabs if they cannot sell them in Ontario.

Mr Farnan: Are you suggesting here that there be a phase-in clause which says "not before" a certain year?

Mr Nelson: Right.

Mr Farnan: Okay, thank you.

Mr Haggerty: Yes, just following Mr Cooke's question, we talk about the width of the stone, the thickness. You could go up to four inches, six inches or eight inches.

Mr Nelson: Yes.

Mr Haggerty: It depends upon the height that you go.

Mr Nelson: Right. An eight-inch tablet is unsafe if it is 20 feet high. I know that is an extreme.

Mr Haggerty: It is unsafe at six feet. But do you have any views on the areas of what the height should be?

Mr Nelson: On a six-inch?

Mr Haggerty: For safety purposes now. Forget about the—

Mr Nelson: Okay, you are talking about a six-inch tablet?

Mr Haggerty: Yes, a six-inch, what would you—

Mr Nelson: Probably a generalization, but it also has to do with the length of the tablet.

Mr Haggerty: Yes, the base, you have to have the base and the anchor.

Mr Nelson: A six-inch tablet probably should not exceed two feet.

Mr Haggerty: A six-inch should not exceed two feet. But you could say a four-inch, but still be on a total of eight inches.

Mr Nelson: Yes, that is a slant. That is what the base measurement is.

Mr Haggerty: So you are dealing with the base measurement then?

Mr Nelson: Right.

Mr Haggerty: And if you went to four inches, what would you recommend the height be?

Mr Nelson: I do not recommend a four-inch tablet myself at all, but there are areas where it is being used—as long as it is kept low. The other good point for a four-inch tablet is, if it does fall on someone it does not weigh much.

Mr Haggerty: What would you say should be the maximum height?

Mr Nelson: For a four-inch?

Mr Haggerty: No, of any monument.

Mr Nelson: The maximum height of any monument? There is no physical—the crushing strength of the granite would be the determining factor there. As long as the proportions keep increasing widthwise and lengthwise you can go as high as the granite will stand to go up. There is a crushing strength granite has.

Mr Haggerty: What is that?

Mr Nelson: I do not have it memorized, but it is—you would be way up there.

Mr Haggerty: Am I correct—and maybe somebody from the ministry can tell us—that there is a limitation on the height now in this new act, or is there going to be in the regulation?

Mr Nelson: There is no limitation in some cemeteries.

Mr Haggerty: That is what I am concerned about.

Mr Nelson: There really does not need to be. As long as the proportions keep increasing by multiples, there is no real need of it.

Mr Haggerty: You will have more stone in the cemetery than grass.

Mr Nelson: It is a possibility. It sounds all right to me.

The Chairman: The heavy artillery has moved in beside you, Mr Nelson.

Mr Tappenden: On this subject, the not-so-heavy artillery, I am afraid. The act provides for regulations to be made which would set standards for monuments and the installation of monuments which would include the footings and so on. It was our intention in the ministry to bring together as good a group of experts as we could find in the province, people like Mr Nelson and Mr Mueller and others, cemeterians, engineers and so on, to really solicit their advice as to what some of the standards would be and to get together with some of the building code people and so on, and set those standards accordingly, which would include things like pounds of pressure, widths and so on.

But we would try to be as accommodating and phased as possible. The main concern is really public safety and we would try to be as accommodating as possible, while not in any way compromising public safety.

Mr Wiseman: I enjoyed your brief, but I just wondered, there is

nothing about what kind of a guarantee a person has. We had someone in here this morning who mentioned how expensive it is for some municipalities where some organizations walked away from a cemetery and all the stones have to be shored up, or in some cases, they have laid them all down where the stones have been broken, and so on. Under normal conditions, how long would a monument person guarantee his work, that the base was put in properly and the frost, after the first year, did not tip it over?

Mr. Nelson: Your problem there is most monument dealers do not put their own foundations in. The majority of my foundations are put in by the city whose area I am installing in. I have really no say over how deep that foundation goes or what material is put in that foundation. I send my order to the city and the city digs the foundation and puts it in.

I have seen lots of five-foot foundations that you have no trouble stepping into and stepping out of, a shallow five feet. I have seen some that were well over five feet. The ones the monument companies have put in themselves—our guarantee is perpetual warranty on the stone. I would consider that to also cover my foundations that I had done myself. We will re-erect or stand up any memorial that has been made by our company. We straighten monuments whether we are asked to or not, particularly if we are asked to and particularly if they are our company's monuments.

We probably would stand in the neighbourhood of 200 monuments a year that have been vandalized by unknown people, and have been made by any company in particular. If a cemetery asks us to help it, normally we do. If time allows, we will, and we usually do about 200. It is just common business practice.

Mr. Wiseman: Would you think the general public would be better served and could hold the monument person to a guarantee, if we made it that he had to put the base in? I know it is awfully difficult as a consumer. He would say: "I didn't put the base in. Somebody else put the base in." Maybe he was just working for the town or the municipality and is only there a short time, and he is gone, and whom do they blame? I suppose the people end up bringing somebody else in to do it, but then paying for it twice.

But I just wondered, when we are looking at the Cemeteries Act and the monument act, if we should not be trying to protect the consumer a little bit more and only have him deal with one person, so that you do not have the five-foot foundation that you can step in and out of, and if you do, they are going to come back on you because it is going to fall over with the first frost that comes in the ground.

Mr. Nelson: You are making cemeteries responsible for the safety of the monument. But then, they should put the foundations in because that is the number one step in the monument being safe, that it is on something stable. The cemetery has the responsibility or the liability for the monuments if they tip, so therefore, if they put the foundation in, that is the first step in doing it and if it is stable, then the rest of it can be built on safely. If it is not stable, it cannot be.

Your question as to warranties and guarantees, quite literally, they are only as good as the company that is behind them. If you are dealing with reputable companies, most companies that I know, most of the better monument companies will fix work that was not their fault, whether it was or not. It is just customer relations. The amount of warranty work we receive is very minimal. The stone breaking or cracking, or whatever, is way less than one per

cent. It is just good business to do it.

Mr Wiseman: In some of the cemeteries I know, some of the old stones are huge stones and maybe they are more stable because of that. You would think they would sink or something, with the working of the ground, but they seem to be more stable than some of the stones that have been put in the last number of years. Is that because we have shoddy workmen—I do not mean yourself—who, in the olden days would never get away with that, but today they are putting out production. It seems to be newer stones we are having problems with, or a real old cemetery where they did not use granite in the old days.

1600

Mr Nelson: Anything that was made shoddy 100 years ago has already fallen down and been forgotten about. That is one reason you do not see it. There is plenty of good stuff still going up. Again, it has to do with the foundation and the ground. If the foundation is right, there is no reason for the memorial to move.

The Chairman: Mr Nelson, thank you for your presentation.

The final presentation of the afternoon is from Pleasantview Memorial Gardens. We have David Halden, Rodger Halden and Anna Ruffolo. Welcome to the committee. We are pleased you are here. If you would be seated, make yourselves comfortable and introduce yourselves, we can proceed.

DAVID HALDEN, ANNA RUFFOLO AND RODGER HALDEN

Mr D. Halden: Thank you very much for having me here. My name is David Halden; this is Anna Ruffolo and this is my son, Rodger Halden.

In this new law you are going to bring in, section 29 prohibits contact by phone. I can understand that you do not want blanket phoning—I agree with that and I am sure my company does—but to take away all phoning would take away my job. I have been with the company, Memorial Gardens, for 34 years. I thought enough of it to ask my sons to come to work for the same company. That is an incidental remark, but nevertheless I am proud of it.

Most of the families I talk to, to whom I have sold, will recommend a son, a daughter, a relative or maybe a good fishing buddy. They ask me to contact these people from time to time, and that is what I do. I phone them. If they do not wish to hear what I have to say on the subject, all they have got to do is say, "No, thank you," and that is the end of it. I have been doing this for 34 years and never had any problem with that. I can sincerely tell you I have not had any problems. As a matter of fact, during the past 34 years, after the sale was made and after a death has occurred, years down the road I have met a lot of sons and daughters who have told me, "Thank God that my mother and dad did these things ahead of time."

I think it is a chance to talk to these people when there is no death in the family or when there is no emotional upset in the family, when there is an income still coming into the family, when they are young enough to pay for it, they are not old and on a fixed income and they can make a decision together. The only way I can get to talk to these people is to phone them and ask them for an appointment, to ask them if I can come to their home and bring them a family registry, a book we put out which is helpful to the family, to answer any of their questions. I always tell them who recommended them.

I am pleading with you, gentlemen. If you are going to bring this law in, I can understand your not wanting us to do the blanket part, telephoning all over the place, but I certainly hope you give a thought to the rest of it.

We also send out a lot of brochures, but you know what happens when most people get a brochure: it usually ends up in the waste-basket. People have to be encouraged a little bit, and that is what we have been doing through the years.

If you are looking at those pictures that were given to you, you will notice that we have the bronze memorials flush with the lawn. They are much easier to maintain. I guess that is all I really want to say. I would like to introduce Anna Ruffolo.

Mrs Ruffolo: In the past eight years that I have been working with Memorial Gardens, I have dealt mainly with the Italian communities of Oakville and Mississauga.

It is through my experience that I have come to realize how important it is to them to make preliminary arrangements; in particular, the elderly. In my homeland, it was quite common to prearrange. In fact, it was a distinctive honour and privilege to have a memorial chapel built.

It is always personally gratifying to see signs of relief after the preliminary arrangements have been made, instead of leaving the burden behind on children or other family members; arrangements that most of them would not have been able to make without a service that we provide at Memorial Gardens.

We take the time to inform them on what is available and how to go about it. We are dealing with people of many ethnic backgrounds who experience language difficulties. Many of them feel more at ease and comfortable because they are able to independently make their own arrangements in their respective language.

I pride myself on referral contacts. I do not believe in random calling to obtain leads, which eliminates the possibility of calling during bad circumstances such as illness or death.

We have achieved high standards in meeting the needs of the ethnic communities. We do not just sell. What we offer is an essential service to buyers at a highly emotional time.

Preliminary arrangements eliminate a rash decision that people can make during a time of grief. Consequently, the ethnic communities have come to depend and rely heavily on our personalized service, in particular the elderly who are not able to speak English.

Personal phone contact informs our previous customers of upcoming religious functions and other related services. This service should continue to exist. Taking it away would be devastating to them. Therefore, please reconsider your bill. Yes, establish regulations on soliciting, but do not take away a very important communication medium, the telephone.

Mr R. Halden: I am a property manager with Memorial Gardens. I started with them in 1977 in St Catharines. I worked in Hamilton and London and now I am based in Windsor.

My concern as a superintendent of a cemetery is, if we cannot generate

an income, we will not be able to upkeep the cemeteries at the level we are keeping them at now. I am proud to say we do keep our cemeteries at a highly maintained level. As a matter of fact, one of the other cemeteries in Windsor, where I am based, has come to us and wants to raise its level of service to the level of service that we use for the public now. If we cannot generate income, it will also affect the lot owners and they will not be happy with the decrease in the upkeep in the cemetery. We are very concerned about this.

The Chairman: I do not understand how the income is going to be affected.

Mr R. Halden: If we cannot make our contact with people to make pre-need sales, that is where basically the money come for us to run our cemeteries. As a matter of fact, in one of the cemeteries in Windsor that I run, Victoria, our grounds budget to take care of the cemetery for one year is in excess of \$300,000. That is just for taking care of the cemetery.

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Mrs Stoner: I assume you are all connected with the Memorial Gardens, the Arbor group?

Mr R. Halden: Yes, we all work for Memorial Gardens.

Mrs Stoner: I had a visit in my office from Ken Guillis, who is here, and a lady who does sales for Memorial Gardens. I asked her if she did cold calling and she said she did. Both of you have indicated that you do not.

Mr D. Halden: I never do.

Mrs Ruffolo: I do not either. Most of my business comes from referrals from people I have been working with for the past eight years.

Mrs Stoner: The lady said she had referral business too, but she also did cold calling. Is there a company policy that prohibits cold calling? Is it personal choice? Is there a quota system? How does it work?

Mrs Ruffolo: With me, it is my personal choice. I work all referrals from Italian families. One family buys and tells the other family and I will go over and help them out too.

Mr Wiseman: You mentioned \$300,000 per year for upkeep of the grounds. How many plots would you have sold in the Windsor cemetery?

Mr R. Halden: In that one cemetery, Victoria, I could not give you a number but there are 55 acres of developed land there now. We have approximately 18,000 burials in the cemetery at present.

Mr Wiseman: How long has that one been in place?

Mr R. Halden: It was before my time. I believe it opened in 1929.

Mr Wiseman: Do you know how much money is in the perpetual fund?

Mr R. Halden: I do not have exact figures. The perpetual care fund does not cover what is spent in the cemetery every year. There is a shortfall on it. That is why we need pre-need sales to generate extra income to run the cemetery.

Mr Wiseman: Do you set aside 35 per cent?

Mr R. Halden: Yes, 35 per cent.

Mr Wiseman: When you sell a plot or a double plot, is it so much for the plot and so much for perpetual care---35 per cent of the plot price? If the plot is \$2,000, say, does \$700 goes into perpetual care and the rest into the general fund? How does it work?

Mr D. Halden: For every dollar that is spent for a lot, whether the lot is sold for \$300 or \$600 or, as you say, \$1,000 or \$2,000, 35 cents on the dollar has to be put away in a trust fund.

Mr Wiseman: When you make up a bill for a person, do you show the plot as so much then add on the 35 per cent, or is the total price \$1,000?

Mr D. Halden: We show the total price first and then, where it says Royal Trust Co, we put in how much of that money goes into the trust fund. In other words, if the lot were \$100, you would write in \$100 and then down here you would put \$35. That is not \$135; that is \$100, period, and \$35 of it goes into the trust fund. That is explained to every family.

The Chairman: Do you sell on commission?

Mr D. Halden: Yes, I do.

The Chairman: Can you tell the committee what that commission is?

Mr D. Halden: Approximately 15 per cent. On some items it is less and on some a little more, but it works out to about 15 per cent.

The Chairman: Do you ever contact people in nursing homes?

Mr D. Halden: Never. I would like to point out something else: we do not talk to people who have had a death in the family. We want to talk to people who are alive, have an income coming into the home and can afford to pay for it in advance.

Mr Dietsch: Mr Wiseman was asking you about the money that was set aside for perpetual care. I understood you to say the company had purchased the cemetery around 1929.

Mr R. Halden: No. The cemetery was opened in 1929. I believe Victoria Memorial Gardens was purchased by Memorial Gardens six or seven years ago. At that time, it was purchased from someone else who had owned it.

Mr Dietsch: At what stage was the cemetery at that point? Was it half full, a quarter full?

Mr R. Halden: It was fully developed. All the gardens were there. There are 55 acres of developed gardens, roads, trees and beds. We still have property left there that we are currently selling, but it has not all been sold.

Mr Dietsch: I am trying to get an idea of what level the cemetery was at. Was it a quarter full or were there two-thirds of the lots left to sell? I am trying to get at the amount of money that was set aside for perpetual care from the earlier sales that were made in the cemetery, perhaps

before you took over. The amount of money that is in the perpetual care fund now is only as a result of a short period of contribution time. I am just curious to know the management cost of upkeep of the cemetery in relation to the amount of money that was put aside. You said you have spent more money now on management to have the cemetery at its very high level of manicuring and you had to contribute towards that. Is that because there was not enough money originally set aside in perpetual care or is it as a result of the fact that you are spending additional funds for the management of the cemetery?

Mr R. Halden: I would say we have a high-level upkeep and the public wants that, a high-level upkeep, and we like to keep the cemeteries looking well. I would not be able to tell you how many lots or how much of the cemetery has been sold. I do not have those figures.

Mr D. R. Cooke: You have indicated that you make all your telephone calls as a result of referrals. Does that mean you get lists from people in some instances?

Mr R. Halden: Yes.

Mr D. R. Cooke: Would you get lists from priests or clergy people?

Mr R. Halden: I have.

Mr D. R. Cooke: You have?

Mrs Ruffolo: Yes, we get leads from the church and from family members. The only way we can contact them is by telephone. There is no other way.

Mr D. R. Cooke: What do you do if that list includes somebody who is in a nursing home?

Mrs Ruffolo: I would never call. The list will always tell me to call these people, that they are ready, that it is okay to call them.

Mr D. R. Cooke: If the list says this person is ready for you to call and in a nursing home, would you still not call?

Mrs Ruffolo: I would never do that.

Mr D. R. Cooke: Why not?

Mrs Ruffolo: I do not feel it is proper.

The Chairman: Who gives you that list?

Mrs Ruffolo: The family or other people. They say, "This is the one you should call."

The Chairman: Does your company give you these lists, too?

Mrs Ruffolo: No.

The Chairman: You are really out there freelancing.

Mrs Ruffolo: That is right, all on my own.

Mr Wiseman: Do you give people money for turning that list over to you or for giving you a list of names, if you happen to sell to them?

Mrs Ruffolo: No, I never give any money. When it is Christmas, some times I send them flowers just to say thank you.

Mr D. R. Cooke: You indicated also that you do not seek out people who just had a bereavement in their family. Have you come upon people of that nature when you have been phoning through a list?

Mrs Ruffolo: Would you repeat that, please.

Mr D. R. Cooke: Suppose you phone up somebody who is on a list and the woman says, "My husband just passed away a month ago and I do not want to talk about it." Has that ever happened, or something like that?

Mrs Ruffolo: It has never happened to me, no.

Mr D. R. Cooke: We had a presentation a couple of days ago from someone who does similar sort of work. He indicated that he got lists from priests and he had that happen. The priest gave him a name saying that this person should be called. When he called the person, they had a death in the family. He said that he just backed off in that case.

Mrs Ruffolo: I do not believe it is right to do that.

1620

Mr D. Halden: It is very important to understand that we are not getting any at-need business from the funeral directors. About 90 per cent of all our sales are pre-need. We are talking to people before there is a death in the family, and we cannot seem to get that over to some officials. I am not saying you gentlemen. But they say, "Why should you have to use the phone when the local tombstone cemetery doesn't?" The local tombstone cemetery is doing only at-need business, for the most part. They might have one or two or three per cent that come into their place and buy pre-need cemetery property. It is mostly all at-need, at the time of death, and we deal pre-need.

I cannot think of a nicer thing than to talk to people pre-need when they can make up their own minds. If they do not want to buy, all they have to do is point to the door and we are gone. You cannot do that at the time of death; it is the opposite way around. It is: "You've got to have it. Now take it." Not only that, but even if we do write an agreement, we give them 30 days to back out of it. I think that is pretty fair. Most people give 72 hours, 48 hours or whatever. We give 30 days.

Mr D. R. Cooke: When a death does occur, they come back to you.

Mr D. Halden: All right. Now that is a different situation.

Mr D. R. Cooke: But you sold a pre-need a year ago and now you are going to call back since her husband died.

Mr D. Halden: A death occurs and, first of all, they would contact their funeral director.

Mr D. R. Cooke: They would not contact you?

Mr D. Halden: No. They are so used to it that they would phone their

funeral director, and more than likely one of the first questions the funeral director would ask is, "Have you made cemetery arrangements?" The person would reply "Yes, I have," with Pleasantview or Memorial Gardens or whatever the case. He then notifies us and tells us what day and what hour it will take place, whether they are going to go to the grave side, whether they want a tent or whether they are going to go to a little chapel that we have, which is free by the way. That is the way that would happen.

We also sell the bronze memorials pre-need and we sell the vaults pre-need. Some funeral directors are up in arms because we are selling vaults, but I can take you back to 1955 and I can tell you that half the caskets that came into that cemetery did not have an outer case or, if they did, they had one that was supposed to be one-inch pine and it was three eighths of an inch at one end and five sixteenth at the other and it was crumbling and crashing in. That would have been a big problem in tombstone cemeteries because you have a tombstone that is going to go over like this. We have not made vaults compulsory in our cemetery, but we advise them. But we advise people pre-need, folks, and that is altogether a different bag of tricks than at-need.

I am sorry if I am enthusiastic about this, but my father died in 1940 and all the kids got around and argued about who was going to pay what. They are great brothers and sisters, but nevertheless they were all raising their own families and they all had problems. When my mother died, they did the same thing. I am telling you that if people look after this ahead of time, they remove that burden. There are a lot of ladies who have come into my office and said to me, "I'm awfully glad that George and I did this because we did it together." Gosh, that has to be worth something.

Mr D. R. Cooke: Do you have very much contact then at the time of need? For instance, would you make other sales, like a tent or something like that?

Mr D. Halden: Sometimes there is a brother or sister buried out there, and this man loses a loved one and says, "I want to be in Pleasantview because my brother and sister are there." He will come at the time of need and buy at the time of death, but it is rare.

Mr D. R. Cooke: But what I am asking is the situation where you have already made all the arrangements with George and Martha and then George passes away. Do you send another account at that time for other things that may not have been thought of at the time?

Mr D. Halden: No. Most of the time they have everything. They have the vault, the opening and closing, the bronze memorial; they have everything they need.

Mr D. R. Cooke: Do you ever send another account at that time?

Mr D. Halden: Yes, sometimes, when they have not purchased. Maybe they have only purchased the lots the first time around. Then someone will have to contact them after death for a memorial, just the same as a tombstone dealer would get in contact with the family. But for the most part, most of those people have prepaid all those things. I might add that if they paid a required amount down and the husband dies, and he was under the age of 66 when he took the contract out, it is automatically paid for.

I feel like I am giving a presentation here.

Mr D. R. Cooke: You are.

Mr. D. Halden: Am I? Just a minute, I will go and get a bunch of contracts and drum up some business.

Miss Martel: I am just going to make a couple of comments which I am sure you will probably want to respond to by the time I have finished. I heard Arbor say the same type of thing. I had a meeting with people from Arbor about this and this was their big concern. Let me just say a couple of things and then you can respond.

You have said that you personally do not call people who are suffering from bereavement, but Norah has told us that in fact a woman who came to visit her does all kinds of random calling all over. So I do not know how you do guarantee or can guarantee that you are not going to hit people who are suffering bereavement. You have also said to us that your company has no policy or no restrictions on who you are calling, and while you personally may not do all kinds of random calling, I do not think that can be said of other people who are doing solicitation as well. So there is a real problem there, which I think we all agree has to be resolved.

Second, and Arbor did this to me as well, there is an insinuation that because you can no longer do telephone or door-to-door solicitation, there will be absolutely no more pre-need arrangements in your industry, period. Surely, by use of mail or by use of ads or by referrals, where because a person was satisfied with your behaviour or your package, he tells his friend and his friend comes in to see you, there are going to be pre-need services still arranged and in fact, without this, your sales are going to drop off 100 per cent. So that is the second thing.

Third, I find it particularly offensive that a parish priest would hand out a list with my name on it to give to your company or any other to start calling me or making contact with me to arrange a service. If my parish priest did that to me—because I am a Catholic—I would be particularly offended. He would sure hear about it. I cannot agree with that at all.

Finally, the change itself. This legislation has been in the works for a number of years now, and we can all agree that there has been some broad discussion on it. I am hoping that the ministry was not so facetious as to put this in place without having some well-documented proof that there was abuse with telephone and door-to-door solicitation. When the ministry gave its presentation to us, it did not start outlining some of those abuses, but I would think if we started to dig and find out why we have got to this stage, we would find that there were some pretty serious offences going on to lead to this stage.

Those are the comments I would like to throw out in terms of door-to-door and telephone, and I am sure you are going to respond.

Mr. D. Halden: Very quickly, I can see your point of view. I just finished saying at the beginning that we are against this blanket telephoning too. It is not good for the industry; it really is not. You are bumping into people who have had a recent death occasionally, and you will do that. No matter how gracefully you bow out of that conversation over the phone, it could be detrimental to everyone.

We are in agreement with that. Cut out that. If you have to bring in licensing, bring it in; if you have to bring in policing, bring it in. But do not just say that I cannot phone my sister and my sister cannot phone me and my buddy that I go fishing with cannot phone that guy over there and that guy cannot phone me, because that is ridiculous.

You are saying to me, "Send out mail." Why should the post office have any better chance at business than Bell telephone? It is the same message, and a verbal message is soon forgotten and a physical message in a brochure is never forgotten as long as it is in front of them.

1630

Miss Martel: I guess that is going to depend the individuals you deal with.

Mr D. Halden: Yes.

Miss Martel: I cannot imagine that if I wanted to know something about a funeral or arrange my own that I would not go and contact somebody. I find it hard when I hear the argument that: "If it wasn't for us coming and knocking on these doors, people would never know we're out here. They would never know enough to arrange their funeral beforehand and all of these benefits." I cannot fathom that.

Mr D. Halden: I hate to—I am going to get myself in trouble here, I think.

Miss Martel: Go ahead. I am putting you on the spot.

Mr D. Halden: I know I am on television or something, and I do not want to liken ourselves to religion. I do not want to do that. But you know, nobody really believes in anything unless somebody tells them and outlines it and answers their questions. So what would motivate you, young lady, to get up in the morning when you have your cup of tea and say to your husband, that is, if you are married—are you married?

Miss Martel: No.

Mr D. Halden: Maybe you said to your friend—

Miss Martel: No, I am not that either.

Mr D. Halden: "Today I am going to work and when I get off work, I'm going to go into a hardware store and buy a washer for that tap that is leaking, a peck of potatoes and I think I'll drop in and buy a plot." Seriously, would you do that?

Miss Martel: Wait a minute. Look at life insurance. No one got up in the morning and said to me, "You should go and buy life insurance today." I thought: "I should protect myself. I'm going to need this. If anything ever happens, where would I be?" So I went out and bought life insurance. No one had to direct me to do that. I did not need a life insurance agent to come to my door.

Mr D. Halden: Do you know why, though? It is because your father and your grandfather bought insurance. They bought death insurance, you are buying life insurance. It is the same policy, it is just they changed the name from death to life.

Now, because it says life insurance, everybody wants to buy it. But when it was death insurance, the man who came down the street had a little black hat on, a black coat, a black horse, a black bag, and the ladies used to pull the shutters on the house and take the kids down to the basement. They did not

want to talk to a death salesman. When somebody came along and told him to change it from death to life, everybody bought it.

All I am saying to you is that if I get a chance to come into your home, I will answer all your questions honestly and truthfully. If you buy what I am selling to you, if you buy my idea, if you buy my truthfulness, you will sign up and you will be happy. If you do not buy what I say, then you will have to do business with a funeral director at the time of death. That is the choice you have. There is another choice---

The Chairman: After we have adjourned, Miss Martel. Thank you.

Mr Dietsch: There is one question I would like to ask. It falls right along this line in earlier kinds of questioning. I understand from your presentation, between yourself and the young lady sitting beside you, that there is a difference in the method by which each one of you sells, how you go about selling your plots.

That brings me to the question of (1) a code of ethics in your practice, (2) some type of training approach that you might use with individuals in your particular company and (3) whether that is in fact carried from one Memorial Gardens establishment, and there are several, to another. For example, real estate people have a code of ethics. Albeit we may not always all agree with it, there is a code of ethics and there is an education training process. What do you do in your practice?

Mr D. Halden: We train; continually we train.

Mr Dietsch: Do you train your staff or does someone else come in to train them?

Mr D. Halden: We train our own staff. It is done pretty well the same way all across Canada; not just in Ontario, but all across Canada.

Mr Dietsch: So there is a standard of training through Memorial Gardens right across?

Mr D. Halden: Pretty well, yes. We have a written-out script that they can follow. You tell exactly the same thing to every family. The beauty of what we tell them is that it is true. That is what makes a sale. It really and truly is. You only have two choices here, Mr Dietsch.

Mr Tatham: Listen, Mike. Pay attention.

Mr Dietsch: The truth is that I have more than two choices.

Mr D. Halden: I did not mean in the law. I am talking about a family. They have a choice of either doing it ahead of time or doing it at the time of death. That is what I meant.

Mr Dietsch: But in the fact that you perhaps make contact and discuss with them the possibility that they may wish to enter into a sale with your company, they could enter into a sale with any other company.

Mr D. Halden: Sure.

Mr Dietsch: I think that is where there are more choices. As human nature goes, so does the approach of every individual. I guess what concerns

me is the approach. It is evident right here today that your approach is different from the young lady's. You two may be very good at your profession; however, there are many of those other individuals who creep into this type of business. That is where the concern comes from on the part of many of us.

Mr D. Halden: I understand how you feel, because it is the same thing in politics. You have a lot of good politicians, but every now and again you have a bad apple. You guys weed them out.

Mr Dietsch: Most of the good ones are lined up on this side of table and most of the bad ones are lined up on the other side of the table, but we are not going to get into that right now.

Mr D. Halden: No.

Mrs Cunningham: For a very short period of time.

The Chairman: Can we give the last question of the day to Mr Wiseman? I know it is an important one.

Mr Wiseman: Mine was that I think you are real good salesman. My colleague to the right may be looking for the leadership of our party and if she was, I think you could sell her quite well. Maybe Dianne could get a campaign manager here this afternoon.

Mrs Cunningham: I do not know whether to take that a compliment or not. We had better talk later.

Mr D. R. Cooke: If this legislation results in your losing your job, do you want to be leader of the Conservative Party?

Mr D. Halden: I am up for offers.

The Chairman: I think you want to involve yourself in something that has more lively potential to it than that party. I would like to thank you very much for your presentation this afternoon.

The committee is adjourned until tomorrow morning at 10 am.

The committee adjourned at 1636.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

THURSDAY 28 SEPTEMBER 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mr Brown

Cunningham, Dianne E. (London North PC) for Mrs Marland

Farnan, Michael (Cambridge NDP) for Mr Wildman

Haggerty, Ray (Niagara South L) for Mr McGuigan

Kanter, Ron (St. Andrew-St. Patrick L) for Mr Lipsett

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Monument Builders Association:

Weber, John H., Chairman, Legislative Committee, Past President; Trustee,
Monument Builders of North America

O'Brine, Brian, President; President, Monument Builders of North America

From Hulse and Playfair Funeral Homes:

McGarry, Brian, President

From the Ontario Catholic Cemetery Conference:

Kelly, Father Ron, Chairman

From the Ontario Historical Society:

Duncan, Dorothy, Executive Director

From the Ontario Archaeological Society:

Caroppo, Christine L., President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 28 September 1989

The committee met at 1007 in room 151.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
(continued)

CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: Just before we begin, members of the committee, we must make a decision about Monday when we begin the clause-by-clause examination. It would seem logical to start with Bill 30, go through it, and then do Bill 31, with one proviso, if this is acceptable to members, the proviso being that when we come across a section of Bill 30 that has overlapping meaning with Bill 31, we could perhaps switch over to Bill 31 and make sure that we are in sync with the two bills. There is not a lot of that, I do not think, but the solicitation, for example, is one. So we might want to think about that. But if that is acceptable to the members of the committee, it is helpful for people who will be dealing with amendments to know that we will be dealing with Bill 30 first and then Bill 31 after that.

Mrs Cunningham: On that point, is the government going to have some amendments ready before Monday? It was mentioned on Monday.

The Chairman: That was a request made by Mr Farnan at the beginning of the week. We have not seen those amendments.

Mrs Cunningham: I think they were just held up in the back row. The government held them up.

The Chairman: I can see that the amendments—

Mrs Cunningham: That is good, because it saves some of us a little bit of work.

The Chairman: The amendments are in the room and presumably they will be distributed today.

Mrs Cunningham: That is great.

Mr Dietsch: Is that guy the whole government there?

Mrs Cunningham: I hope so, because I do not want to get blamed. He looks like he can handle it.

The Chairman: That is a scary thought, Mr Dietsch.

Mr Dietsch: If it is scary to you, Mr Chairman, how do you think I feel?

The Chairman: Let us move on to the presentation. We have first this morning the Ontario Monument Builders Association. We have a vast array of talent at the table, I can see. So I look forward to the presentation. If you would introduce yourselves, we can proceed and the 30 minutes are yours.

ONTARIO MONUMENT BUILDERS ASSOCIATION

Mr Weber: My name is John Weber. I am from Kitchener and I am the chairman of the legislative committee for the Ontario Monument Builders Association. On my immediate left is Brian O'Brine from Fonthill. He is the president of the Ontario Monument Builders Association; he is also the president of Monument Builders of North America. On my far right is Robert Youngs from Toronto. He is the vice-president of the Ontario Monument Builders Association. Next to him is Don Sanderson from Orillia, and he is the immediate past president of the Ontario Monument Builders Association. Along with our written presentation, we have a slide presentation which we hope will be helpful, and this will be handled by Sarah Withrow, who is part of the staff of OMBA.

I am here to speak for the Ontario Monument Builders Association. For the past 12 years our association has been consulting frequently with the government of Ontario about the legislation we are talking about today, Bill 31. It has been a long process. We have been frustrated. At times we felt the civil service did not understand the situation. There were even times we felt they did not care. But now we feel fairly positive about the turn the process has taken. We are cautiously optimistic about some of the parts of the new bill. Your decisions should put an end to a lot of consumer abuse.

We have some reservations, however. I will tell you about them shortly. But first, I have to give you some facts. Those facts were difficult to put together, but it was necessary to put them together because it became obvious throughout our negotiations that nobody had a good picture of the monument industry. Now we have a good picture. We have done surveys. We know who Ontario monument builders are, what they sell, how they compete with each other and what their relations with consumers are like. Those are valuable facts. Without them, it is tough to write effective legislation.

Here are the facts. There are 152 monument builders in Ontario. Some 92 of those 152 monument builders are members of our Ontario Monument Builders Association. That means 60 per cent are active members. However, on this issue I am talking for some four fifths of Ontario's 152 monument builders, because we mailed a survey to nonmembers on the issue. Of the 60 questionnaires sent in that survey, 32 nonmembers replied saying they supported the stand I will be taking today and 28 did not reply at all. Those numbers differ from what you see on the slide because we are still having questionnaires returned to us daily.

The survey questionnaire and the list of those who replied are in the back of the briefing book I will be leaving with you. We went to the expense of having that survey done because there have been some representations to government that our association does not truly represent monument builders in this province. As I talk to you today, I am confident that what I am saying is what over 80 per cent of Ontario's 152 monument builders want said. That is one misunderstanding cleared up.

There are two more misunderstandings I would like to address. The first is that some parties have alleged that somehow the monument business is not competitive and that we do not serve the province. Our survey shows that just

is not so. We asked monument builders about the cities and towns they serve. The map shows where over 92 OMBA members serve. Every citizen in Ontario has easy access to an OMBA member's services. If you added in the coverage of the 60 non-OMBA members, it would be clear that not only is there complete coverage of the entire province, but there is competition across the entire province.

Our survey also shows that the average OMBA member competes against eight other monument builders for business. There is coverage. There is competition. Ontario's citizens have access and a choice.

There is one more misunderstanding that has to be cleared up. There have been representations made that monument builders get most of their business from sales of things other than monuments. Our survey shows that this is not true either. Nearly two thirds of the monument builders we surveyed did not sell anything but monuments. The average monument builder's business is some 95 per cent based on monuments and nothing but.

To sum up: We are in the business across Ontario, we are in competition across Ontario and we are dependent on that business across Ontario.

There is also competition for monument dollars from other organizations. The consumer can choose a flat marker sold by some cemeteries. Some private cemeteries also sell upright monuments. So do some Catholic cemeteries. In addition, in the past four years, Toronto Trust Cemeteries have begun selling upright monuments. The problem is that when cemeteries compete against independent monument builders, the playing field is not nearly level. That is what these newspaper reporters have found out. There are a number of things tilting the playing field.

One of the biggest wedges is the question of taxation. Nonprofit cemeteries include municipal, religious and nonprofit trust organizations. Any nonprofit cemetery selling upright markers has three tax advantages over an independent monument builder selling the same thing. They pay no property tax, no income tax and no business tax. We pay all three. Levels of government are effectively subsidizing nonprofit cemeteries to compete against taxpaying businesses, which means that taxpayers are effectively subsidizing nontaxpaying organizations to compete against taxpaying organizations.

That is not logical. It is also just not fair. When CN competed with CP, it was taxed on the same basis. When the CBC competes with private stations, it is taxed on the same basis. When the Ontario government went into the oil business, it paid taxes on the same basis as Texaco. The reason for that is obvious. An untaxed organization in competition with an organization that is taxed just has too much of an advantage. The cemeteries' unfair tax advantage keeps new companies from entering the monument field. Who is going to enter the field when the competition does not pay taxes? The answer is no one. Effectively, by allowing cemeteries to sell monuments you are stifling competition.

If that tax advantage is allowed to continue or becomes more widespread, we say that many of our members will go out of business, which means that the tax advantage is ultimately unfair to the consumer, because the consumer will see his or her choices diminish. But even if that enormous tax advantage were to disappear, the playing field still would not be level. That is because the cemeteries have the home-field advantage. The home advantage is as powerful as playing a Russian team with Russian referees. If you do not understand that metaphor, you are invited to a poker game tonight and we will be playing with my cards.

A lot of what these recent newspaper headlines have talked about refers to that home advantage. You have paid attention to it in your legislation. Bill 31 stops funeral homes and cemeteries from selling hand in hand. You have stopped them having cosy business relationships. You have told them they must disclose referrals. But still, there is a considerable home advantage for the cemeteries.

It is their strategic market position. The consumer has to come to them. The consumer comes to a cemetery at his or her most vulnerable point, the point of grief. Grief makes you a bad consumer. You do not ask things like, "Where's the competition?" You do not pore over the contract to find out that you can have another company install the monument. You are in no shape to look for the best value. The temptation to take advantage of that situation is one that has not always been avoided.

I have two main jobs here today. One is to address the tax situation. The other is to address the strategic market advantage question. Over the years we have worked with the bureaucracy to try to help frame regulations addressing both. Seven years ago we came up with a proposal that read like this.

It said simply that if tax-exempt cemeteries wanted to be in competition with taxpaying monument builders, they should play on the same field. They should open a separate taxpaying company to do the competing. They should move that company from the cosy confines of the cemetery and away from the temptation to sell at graveside. As tax-free entities, the cemeteries themselves should also share their information with others so there would be competition for the consumer's dollar.

They should not be allowed to discriminate against independent monument builders. They should not refuse them access to their tax-free lands for the purpose of erecting or maintaining a monument. Cemeteries should compete for consumer dollars on installing foundations and flat markers, instead of having the exclusive right to sell those services.

The civil service balked at that proposal, and so at OMBA we searched for another idea. We wanted something that would preserve competition and serve the consumer. We found it in Massachusetts, which has been the birthplace of consumer movements ever since the Boston Tea Party. That state has regulations that are quite simple: Only cemeteries can sell cemetery lots. Only funeral directors can sell funeral services. Only monument builders can sell monuments.

This legislation has a lot to recommend it. It is simple. It is easily understood. It removes the possibility of tied selling. It is self-policing. It is cheap. It has been tested and it works. At the Ontario Monument Builders Association, we still believe it is the best possible legislation, and consumer groups seem to agree.

1020

However, we have come to the conclusion that the ministry is not prepared for that model because it said it was too intrusive, so we have come up with a different proposal to put before you today. James Thurber once said, "Never bend over so far backwards that you fall on your face." We believe this proposal demonstrates that we will bend. However, it also seeks to maintain a level of competition that will serve Ontario consumers by ensuring enough independent small firms survive to provide that competition.

Essentially, we want any cemetery which is exempt from business, property and income taxes to be allowed to sell only cemetery services. Their tax-free status should prevent them from selling upright monuments. Those taxpaying organizations, such as private cemeteries, funeral directors and monument builders, would be allowed to sell upright monuments. That is a simple, straightforward and fair change.

Some cemeteries may argue that they need the income from monuments to subsidize their cemetery costs. We believe the government has enough experience in the area to know what is wrong with this kind of cross-subsidization. It creates invisible costs for consumers, skews the real prices of goods and services and ends up muddling the real reasons we do things.

The core of our proposal says that cemeteries have received their special tax status for the purpose of providing cemetery services and for no other reason. The logic of our proposal says it is illogical that they should have a tax break to compete against companies not enjoying the same status. The practical results of our proposal would be to keep more companies in business so the consumer has more choice.

There is only one other matter our members wanted to bring before you. That is the question of trust funds for the care of monuments, also referred to as an installation levy. Currently, the proposed legislation states that these funds should go into the cemetery's trust fund. Here we have the real danger of cross-subsidization again. In effect, the funds for the care of monuments could go towards enhancing the competitive position of cemeteries competing with monument builders. We would be financing our own competition.

The funds for monument care could be diverted into other maintenance, or even towards financing a monument display merchandising plan. That skews real costs, provides real temptations and does not really do what this committee wants done.

The solution is simple. Keep monument trust funds in a separate fund, to be used only for monument maintenance. We do not think it is too much to ask that the moneys in the fund be used for the purposes for which they were collected.

Our organization's aim in this 12-year process has been to ensure that competition in the monument business will remain open and that the playing field for that competition is level. I believe that aim also serves Ontario consumers. Monument builders have never asked for a monopoly. The minister's opening remarks where he said we were asking for a monopoly were incorrect. We welcome competition, but we want fair competition.

We do not believe that having tax-free organizations competing with taxpaying organizations helps consumers, because it works to harm a free market. We do not believe that allowing cemeteries to have their strategic market advantage helps consumers, because a grieving consumer is a consumer at a disadvantage.

Let me summarize. Right now, cemeteries have unfair competitive advantages. They have the considerable advantage of not paying tax. They have the advantage of their strategic market position. Those advantages are so large that if they are allowed to continue it will lead to monument builders shutting down. Certainly, no new monument builders will open if the situation goes on.

The result will be less competition. Where there is less competition, there are higher prices and the trend towards corporate concentration will continue. None of those things will benefit the consumer. The solution is to amend the proposed legislation to ensure fair competition. Let taxpayers compete against taxpayers. Level the playing field.

I would be pleased to answer any questions about this presentation.

The Chairman: Thank you, Mr Weber. There are a number of members who have indicated an interest.

Mr D. R. Cooke: It was a very strongly presented presentation. You are to be congratulated. But we are a little confused in that we have already had some presentations, for example, Mr Mueller from Wholesale Lettering and Carving. You are aware of him and I take it he is not a member of your organization.

Mr Weber: That is right.

Mr D. R. Cooke: The approximate information we have is that he sells about half the monuments in the province.

Mr O'Brine: Certainly, we feel the membership of the Ontario Monument Builders Association represents a majority of the volume in the province. We have done that because we have surveyed through the freight firms. There are two trucking companies in the granite industry that bring most of the freight into this province from the quarry sites. We have done that because we were using a freight surcharge in order to support our efforts in this legislative battle. I think we have a pretty good idea of the relative volumes and so on. While I do not mean to dispute with anyone, we have a fair idea of that.

Mr D. R. Cooke: That is something he said.

Mr O'Brine: The majority of the volume in the province, we feel, belongs to and supports the OMBA position.

Mr D. R. Cooke: We also heard from another neighbour of mine, a Mr Nelson, yesterday, who indicated that his family companies have the largest retailing of monuments in Canada. I seem to be surrounded by monument people. The gist of my question is, both he and Mr Mueller indicated that they welcome the legislation the way it stands and feel it would be more competitive.

Mr Weber: I would dispute it. I heard Mr Nelson's testimony too, and I would dispute some of the numbers as to how large his operation is but recognize the fact that they are selling monuments to the cemeteries. Why would they not support the legislation? We are retail monument builders who sell directly to the consumer.

Mr D. R. Cooke: We are also hearing from cemeteries that there is something they do not like about the legislation. We would be forcing them to buy their plots back and to share with the purchasers of plots the inflation effects. You may have heard some of their evidence to the effect that they feel they will be squeezed. I do not see cemeteries going out of business, but some of them have suggested that to us. We are caught between both of you—you understand that—in essence. But the gist of it seems to be that the consumer, who we are really trying to look out for, would benefit the most if he had

more choice. I think you are suggesting that he would benefit more if he did not have the choice from cemeteries.

Mr Weber: We are suggesting that ultimately he will have less choice if the cemeteries are allowed to pursue the business of selling memorials, because monument builders simply will not be able to compete with the advantages that the cemetery has vis-à-vis strategic market position and taxation. It does not seem reasonable to me that of two companies selling the same products, one sells tax-free and the other does not. The one that sells tax-free also makes all the rules and polices the game.

Mr D. R. Cooke: They do not seem to feel they are making the rules.

Mr Weber: Well, they do. They make the rules and the regulations in the cemetery.

Mr D. R. Cooke: Oh, in the cemetery.

Mr Weber: Up until now they have had exclusive installation, which also can lead to a situation that makes it very difficult for the monument builder to compete.

Mr D. R. Cooke: Have you looked at any other jurisdictions where this competition has been allowed to continue and seen businesses going out of business?

1030

Mr O'Brine: Perhaps I could answer that from the Monument Builders of North America. In the United States, this has been a great problem. John mentioned the cemeteries using their bylaws, for instance, to restrict competition. There have been a number of cases that have gone all the way to the US Supreme Court. There are Federal Trade Commission hearings right now on some of these issues.

We note that in the legislation there is an effort to prevent that type of discrimination, but I think the point is what John is mentioning, that from the consumers' point of view, we feel that the less choice they have and the fewer companies there are to purchase from and make a selection from, it is bad for the consumer.

Our point simply is that when we are up against cemeteries, and especially if the cemeteries become more concentrated in their ownership, we feel that ultimately we are going to be forced out of business. If there are fewer monument builders to select from and you have to buy it from a cemetery because there is nobody else left to buy it from, we do not think that is going to help consumers, never mind us.

Mr D. R. Cooke: Are you suggesting that cemeteries perhaps favour certain companies, such as Mueller and Nelson, over OMBA members?

Mr O'Brine: No, I do not think that suggestion is there at all. We are simply saying that when a cemetery sells monuments, wherever it gets them from, it is in such a powerful position that the playing field is just not level. We cannot survive in that type of atmosphere.

Mr Weber: The cemeteries are not going to buy their monuments from

all the monument dealers in the area. They are going to buy them from one source of supply, or maybe two.

Mr O'Brine: Most people will tend to bury in a cemetery because their family is there. That is a well-known fact. People are brought back from all over North America and the world to come back to the old family area. We think it is very unlikely that under those circumstances a person would buy his monument anywhere else. It is very unlikely they would bury in one cemetery and go to another cemetery to buy their monument and so on. That would be the same as taking your Ford car into a Ford dealer, but going across the road to Canadian Tire to get the parts and asking the Ford dealer to put them on. It just is not going to happen.

There will be a tendency to bring the wholesale into a package type of thing. That will be working on the whole marketplace as well.

Mr D. R. Cooke: Would it help if we were to force the cemeteries to provide information from other monument dealers, pamphlets, price lists, etc, on location?

Mr O'Brine: In terms of the real way the marketplace works, I doubt that very much. Monument builders traditionally wait for a period of time out of respect for the family's grief before offering their services. Another advantage the cemetery has, of course, is that it is able to package the monument sale with the burial plot, perhaps at the time, even before burial.

I do not think simply outlining a number of alternative companies and so on will work, because the consumer is just not in the shape to consider anything like that at the time. I think cemeteries, as well, have problems many times with rules and regulations and so on that they have handed to consumers at the time they are picking out a plot; in other words, at a time of high grief. We all know in this field, the bereavement sector, that because of people's natural upset at that time, many times those rules go right over their head, so I think a listing or something like that would be very ineffective.

Mr Farnan: I would like to commend you for an excellent brief. I have a couple of comments. I believe OMBA has represented its members very well over the years. I certainly have been kept up to date with the issues in the time I have been critic.

I am a little bit concerned that maybe you are too flexible. The reality of the matter is that we have the Massachusetts experience. You clearly outlined the advantages of this. Why are you giving up on that model, which obviously has the best protection, I think, in terms of the industry as a whole?

Mr Weber: We are not giving up.

Mr O'Brine: It is refreshing to hear that we are being too flexible because that is certainly not what we have heard on other occasions. It has been made fairly clear to us from ministry officials and from statements the minister has made or the previous minister made in the House that the Massachusetts model was not going to work. The reason they gave for not being in favour of separation was that it would be too intrusive; in other words, it would be intrusive on the economy or the free enterprise sector, I guess, to ask those who are already doing certain things to stop, perhaps divest and so on.

We would point out, however, that no one has considered how intrusive all this is on our businesses, on our sector. If we are forced to go out of business because of having to compete with some of these great conglomerates and so on, we would consider that pretty intrusive ourselves.

Mr Farnan: It has not surprised me to hear some questioning on this position, particularly when it has come from individuals or corporations that would tend to gain from an integration of the industry.

One question I have is on—the pages are not numbered, but the page has "Slide: March 1982" written on it. The paragraph reads, "And they should not be allowed to discriminate against independent monument builders." These would be the tax-free cemeteries. "They should not refuse them access to their tax-free lands for purposes of erecting or maintaining a monument." If they were paying taxes, could they exclude them?

Mr O'Brine: It has not been the practice. The taxpaying cemeteries generally do allow access to their grounds, but they restrict the conditions.

I think what we are getting at here and the reason for putting this in at that time was because of the history in the United States where cemeteries, whether private and taxpaying or nonprofit and nontaxpaying, were competing with monument builders. They used their bylaws and the fact that they basically controlled the gates to the cemetery in order to make it difficult or very obstructive for monument builders to get in and set their monuments and so on. There were things like road use fees, gate fees, inspectors' fees and so on used to limit competition. These were the subject of those court cases and Federal Trade Commission hearings that I mentioned earlier.

Mr Farnan: This is a little bit, not so much ambiguous, but it would tend to imply that you would accept refusing access in cemeteries that were paying taxes, but you have ruled that out and you are saying that the market is open and will continue to be open.

Mr O'Brine: I think our original proposal basically said that if the cemetery wants to be a public utility, so to speak, then fine; it should allow everyone in and out without restriction. But if they want to sell monuments, they should set themselves up as something separate, outside the cemetery and away from the cemetery and so on.

Mr Farnan: You will be interested to hear that we had a group yesterday—I am not sure if my memory serves me right. Perhaps it was not a cemetery. It was The Simple Alternative, a nonprofit group. We asked them if they would be prepared to look at paying taxes and they answered yes, they would be prepared to pay taxes.

I would certainly like a response from the nonprofit sector to the suggestion of a level playing field because I do not think it has been addressed in the briefs of the nonprofit sector. It is an issue this committee cannot shy away from. It might be easy for us to shy away from it, but I think we have to look at the facts. There is a variety of players in the field at the moment and I think they should be asked to justify in a very brief way what the rationale is for maintaining this nonprofit status. It may have been justified when it was initiated, but it may not be justified in 1989. At a time when we are looking at putting together a total review of the bereavement industry, we would be remiss if we did not address that issue in a very substantive way.

1040

The Chairman: I wonder, Mr Farnan—we really are out of time—if you would give Mrs Stoner a chance to ask a question.

Mr Farnan: Just one last thing: I would ask that the clerk contact the nonprofit groups so that a brief statement as to justification of nonprofit status can be made available to the committee before our deliberations on the clause-by-clause.

Mr D. R. Cooke: All nonprofit groups?

Mr Farnan: The major players that have presented briefs. I do not think it is answered in the briefs.

The Chairman: I wonder if we could just doublecheck who it is specifically you wish the clerk to contact so that we will not be on a fishing expedition. Not right now, but perhaps over the lunch hour.

Mr Farnan: I would be happy to do that.

Mrs Stoner: I realize we are short on time. I have two very brief questions and I hope I get reasonably concise answers on them. First, how long have cemeteries been able to sell monuments?

Mr O'Brine: It varies.

Mrs Stoner: In Canada, and in Ontario specifically.

Mr O'Brine: There has been some question, we feel, and I think some cemeteries have admitted that, as to what their legal allowance was in terms of selling. Some cemeteries have sold flat markers for many years, for instance, but I recall an occasion where a cemeterian—it was the president of the cemetery association—mentioned that they were not sure whether a municipal cemetery should be in that business or could be in that business.

Mrs Stoner: That is not what I asked. I simply want to know, has there ever been a time in Ontario when cemeteries have been prohibited from selling markers? Yes or no?

Mr Weber: The act itself does not give them the right to sell monuments. It does not say they cannot sell them either.

Mrs Stoner: Have cemeteries ever in this province been prohibited from selling monuments and markers?

Mr Weber: No.

Mrs Stoner: No. Okay. The nonprofit groups have told us that there is a good possibility that they will go out of business and that their cemeteries will ultimately become the responsibility of the municipal taxpayers of Ontario if they are not allowed to continue to have some revenue from the selling of monuments and markers. How would you propose to keep those nonprofit cemeteries in functioning order if you take away their source of revenue?

Mr O'Brine: I think it is no different from our own firms. As businesses, we cannot simply always look at more income. We have to look at

our costs, for one thing. That is how we all operate. That is how we produce a profit. In the cemeteries' case, that is how they would produce an operating surplus, or at least a break-even point. To simply go and take over somebody else's business saying, "I need your money simply because I'm doing a public service and I have to continue on," we think is a very unrealistic way of looking at things. Where does it stop, for one thing? What is next?

Mrs Stoner: I have difficulty in particular in seeing the nonprofit cemeteries go down the tubes and seeing the small municipalities in rural Ontario having to pick up the cost for that in the process of providing you with a monopoly.

Mr O'Brine: First of all, I would like to question the idea of providing us with a monopoly. We have not asked for a monopoly. We have simply said that we are willing to compete and I think the figures show that we compete every day. How could you construe a monopoly from my company's competing with 13 other companies, for instance, and simply saying, "I'd rather not compete with cemeteries, which pay no taxes and so on, on top of those 13 competitors"? I do not consider that a monopoly. I think that exists all across Ontario. I do not think solving the cemeteries' problem by wiping out the monument industry in this province is a correct approach.

Mrs Stoner: Nobody would wipe out the monument industry in Ontario. Clearly, people would still build, buy and install monuments.

Mr O'Brine: Certainly they would, and they can get them from India, Africa or anywhere. They can bring them across the ocean. The point is that we are retail monument builders. I speak directly to the consumer in order to make a monument. Now those consumers will not get to talk to me. They will talk to a cemeterian or what have you. It is essentially a sideline to them.

Mrs Stoner: Consumers can choose to talk to you.

Mr O'Brine: If I am here.

Mrs Stoner: You do a lot of advertising through church bulletins and all sorts of things or through the cemetery or any way you want to. That is the whole object of the exercise, that they be given choices.

Mr O'Brine: If I am here. To be able to compete with a cemetery that is not paying taxes and is probably getting a break on its advertising rates because it is a nonprofit group and has the funding that some of these great outfits have, I think is tantamount, for instance, to McDonald's moving across from the local coffee shop. They cannot compete with a national advertising budget and so on. I use that analogy.

Mrs Stoner: They do. We have lots of both.

Mr O'Brine: You are talking about very, very small businesses here. Even a good-sized business in the monument industry might have \$1 million in sales gross; that is a big business in our industry.

The Chairman: Excuse me. We really are considerably over time and it is not fair to the groups that will follow. We thank you very much for your presentation. You can tell that if we had an hour for every presentation, we could use it, but we are restricted to this week for hearings. That made it

very difficult. We really have no choice. Thank you very much for your presentation.

Mr D. R. Cooke: On a point of order, Mr Chairman: I would just like to say that every night, including last night, I walked my dog down Filbert Street to Victoria Street and past Mr Weber's very fine establishment, and I hope it is always there.

Mr Weber: I concur. I think that would be an excellent idea.

The Chairman: The next presenters are from Hulse and Playfair Funeral Homes in Ottawa. Are Mr McGarry and Mr Kennedy here? Gentlemen, welcome to the committee. We look forward to your presentation. We are going to try to get back on track with time, so the next 30 minutes are yours.

HULSE AND PLAYFAIR FUNERAL HOMES

Mr McGarry: We will try to speed up a bit to keep you on schedule. First of all, I want to thank you for the opportunity to be here before you. To my right is Doug Kennedy, vice-president of Hulse and Playfair and a shareholder in our company.

I would like to say at the outset that I think we are in a unique position—I am talking about Hulse and Playfair Ltd—in Ontario. We are a company that is family-controlled, by my own family. We have employee participation by way of Doug Kennedy and we have corporate ownership by way of Trillium Funeral Service, which you know is an arm of Arbor Capital.

We do not have a lot to criticize this morning. We think the legislation is taking the correct directions. In fact, we commend both ministries that have been involved, the Ministry of Health and the Ministry of Consumer and Commercial Relations.

You have before you a detailed summary, dated May 1989, and then on top of that again, I think right in front of you, is our most recent submission, and that is what I would like to draw on for the next few minutes.

We want to say succinctly and once again that we are very much against telephone solicitation. We have done our homework on this subject. We placed an advertisement in a local newspaper in Ottawa on 10 January 1989 and were overwhelmed by the response. Within a very few days we received 294 replies, some of which were lengthy letters—not just the the ad clipped out and mailed in but lengthy letters—objecting to telephone solicitation of funeral service. Only one response, unsigned, I might say, was in favour of telephone solicitation.

If we have any doubt here this morning that we need to discuss this much further, I would refer to you—I do not want to read it to you—a letter from an administrator from a seniors' home in Ottawa. I quote it in my brief; as I say, there is no point in reading it to you. I think the ministry has the full text, by the way, but it is not for me to disclose the name; in fact, they have asked to remain anonymous.

In addition to the prohibition of telephone solicitation, we are very pleased to see that prepaid moneys will continue to be held 100 per cent in trust. We assume from this that it will exclude commissions, either through

insurance-funded funerals or indeed through cash payment. We await the regulations to have that clarified.

We are pleased that itemized accounts, we understand, will be dealt with in regulations.

We are pleased that there is a compensation fund being set up. I want to come back to this at the conclusion of my presentation, because it is most certainly needed.

1050

We are pleased, it is our understanding, that reasonable cost information must be presented over the phone—I mean by the consumer initiating the call, of course. When they do take the time to phone several funeral homes, we will be obligated, it is my understanding, to give this information over the phone.

Finally, we are pleased that we will be required to provide nontraditional funerals. I have a little experience, as I am sure you have, as a politician myself on a different level, as a trustee with the Ottawa Board of Education, but my constituency is the core of Ottawa. If I have ever learned anything as a trustee, it is that our country, the mosaic, is changing substantially. It is time that we did recognize the various traditions that do exist, particularly in the core areas of urban Ontario.

I guess those are the accolades. Let me move on to two areas where we do not particularly agree.

We are disappointed with the complete transfer of the funeral service vocation from the Ministry of Health to the Ministry of Consumer and Commercial Relations. We understand the necessity of much of our work being administered by CCR; of course, I am talking about prepaid funeral funds, itemized accounts and indeed all commercial aspects of our work. I am not going to dwell on the topic, because perhaps it is really history now, but I do want to at least table our concern.

We believe funeral service personnel in this province are professional people; it is a combination of a business and profession, which is an oddity in itself. We want our training to emphasize not just the business practices but also to have the understanding of the dynamics of grief. We work alongside other professionals such as the clergy, nurses, psychologists, social workers and physicians, and we do fear that the emphasis could be lost in the consumer ministry and a focus developed whereby funeral personnel are treated purely in a sales-oriented fashion. I hope I am wrong.

Add to this the extreme caution we must now take in the handling of human remains where the victim has died of AIDS or hepatitis B. I maintain that there was good reason why we did come under the Ministry of Health. My only comfort, if I may say so, is that I understand we will remain under the auspices of Humber College here in Toronto, the health sciences division. This gives me great comfort, if you have time to examine the program there. I urge you, if you ever have the opportunity, to drop by. It is probably the most professional in North America.

The prohibition of funeral establishments being located on cemetery grounds is unnecessarily restrictive, in our opinion. We believe, if the additional laws and regulations are brought in, as indeed we feel they will

be— and I am talking most particularly about the prohibition of telephone solicitation—we think the public could very well be served with combination funeral home and cemetery sites. Given the opportunity, the public will show very quickly their support for such a concept.

I have included some figures which I need not read to you, but from personal experience there are a number of sites across this country that have grown from zero funerals to serving 400 to 500 families in a very short time span, within three to five years. Having the opposite experience of developing a new funeral home—and a number of us, of course, have done this in the last five years—it is unheard of to grow to that height in such a short time.

I think the government of Ontario is going against its own consultant's advice. There was a recommendation, and it is in the appendices, that the restrictive regulations be removed. Again, I need not read the brief to you, but it is entitled *The Impact of Cemetery-Funeral Home Combinations in Western Canada*. I draw your attention, at your leisure, to read particularly the section entitled "Broad Observations." I find it interesting that a consultant would be hired, who travelled virtually coast to coast and particularly in western Canada—by the way, not all things are great in western Canada, but he did bring recommendations back that the combinations were serving their communities well.

I think we understand very well the market forces that would be upon us in this province if combinations were allowed. I suggest that some day they may come. I am not suggesting that I am going to change your mind today, by any means, but if onsite becomes a reality, I do recognize the forces at play. I do have a funeral home very close to a major cemetery in Ottawa—Pinecrest Cemetery, if I may be so specific—and the volume of that particular branch would probably drop maybe by a third within a few short years.

I am suggesting, however, that for I and others in the area who would lose initially, the loss would be temporary if we are progressive enough to establish onsite locations either on our own or in conjunction with an existing cemetery. To be more specific on what might be defined as our vested view on this topic, indeed we are prepared to locate funeral homes on cemetery sites in our area, more specifically on Memorial Gardens properties or indeed with another cemetery if the law were ever to change. Yet "vested" is not entirely the best description of our position, because, if I may be immodest for a moment, we have grown to be one of the largest funeral service companies in Ontario, indeed in Canada, and the status quo suits us very well. We are obviously quite prepared to continue with the status quo, but I am not sure that the status quo serves the consumer, at least in the long run.

A minority of funeral homes, some of which are the strongest opponents to onsite, practices what we would call a double standard of being involved directly or indirectly with monument outlets, flower shops and other accoutrements associated with the bereavement industry. I have no personal objection to this cross-ownership, obviously, from my suggestions here today. I believe funeral directors, however, cannot have it both ways. I am sorry Mr Farnan is not here, because I think that what he was suggesting—Well, let me put it this way: I do not think we can have it both ways; either we are combinations or we are not combinations. It seems a little foolish to me that we are allowed to have our flower shops onsite, our monument sales onsite—I can name quite a number across this province—yet when a cemetery or someone else intrudes, to use another expression, into our vocation, we proclaim foul,

that it is bad for the consumer. I do not think we should or can have it both ways.

In summation, we are generally pleased with the proposed legislation and, again, we commend both ministries. The proposed prepaid funeral legislation, in our view, approaches excellence in this province. I do not know what more you could do as a committee to improve, but I am sure you will have a close look at it. However, in the debated area of onsite, we do say, whether it be now or some years from now—maybe a proper time span should be allowed to reorganize—that combinations would serve the public eventually, provided regulations accompany.

In any event, as regulations to Bills 30 and 31 are being designed—of course, I think you will agree with me that this is very much an important part of the process—I am asking you that precaution be taken not to focus entirely on the commercial aspects of the funeral service vocation, at least to the detriment of the high degree of professionalism I believe this province has reached.

Although I am critical of my peers at times, I think one must give credit to the Ontario Funeral Service Association for developing, I believe, some of the finest professionals throughout North America; and I have had the privilege to travel throughout North America and examine funeral custom. So I ask us not to lose sight of the accomplishments of the Ontario Funeral Service Association, even though I am not in 100 per cent agreement.

Finally, and perhaps most important to my discussion with you today—I would like to leave some time for questions—I want to talk about the Board of Funeral Services, because I had the privilege to serve on the board for some four years. There have been many good and, if I may say so, some not so good appointments to the Board of Funeral Services—I do not know in which category I should categorize myself; I will leave that up to others to decide. But I plead with you, and I am not being dramatic about it, to attempt to ensure that appointments to the board, and I am talking about both lay appointments and professional appointments, encompass experienced community people who are serious about their responsibilities.

1100

If funeral directors are serious, and I think the majority are in this province, then I am suggesting the majority of the Board of Funeral Services should be composed of funeral directors. If we are not serious, then someone else had better do it for us, and I am sure will.

I do not think boards of funeral services have always served well. I am going to be as candid as I can with you about that. The potential is there, capable people do exist, but we must seek them out. I am saying to you that on occasion there is a mentality—I do not think it is done intentionally—that does exist from time to time on our board to protect the interests of funeral directors.

I am going to be very specific for just a couple of minutes, and I hope to leave time. Approximately four years ago, there was a rumoured situation in my home town. I was on the Board of Funeral Services, by the way, at the time. I brought it to the attention of the board, and—I think you will understand this as well as anyone—because of my perception of a conflict of interest, I brought the matter forward and excused myself from the process, being a

competitor of the individual funeral home. Some months went by and we were told all was well.

A second time a rumour came forward, this time with the then chairman of the board, Gerry Loughheed, who I believe is appearing before you this afternoon, a very capable funeral director. We went again before the board, the registrar, and gave our concern. Again, we were told: "All is well. Don't worry about it."

To make a long story short, all is not well. There is a shortage of funds; there was a theft, albeit the gentleman is now deceased. But the theft was discovered recently and there are shortages. What happened? What is the conclusion to the mess, and it is a mess, before us in Ottawa?

I have been critical of past boards. I am going to be slightly critical of the present board, if you will bear with me.

The conclusion is that the present board condoned the transfer of trust funds from one funeral home to another without—and I repeat "without"—the client's prior consent or knowledge. In my view, this is an action which is outside the Prearranged Funeral Services Act. I am suggesting to you—and we can all read it for ourselves, and we have received legal advice on it—that a contract cannot be unilaterally assigned by a funeral home for goods and services it has contracted to provide without the express written consent of the party who made the contract. This is tantamount to a trust company phoning you or I up and saying: "We transferred your funds from trust company A to trust company B. I hope you approve."

What kind of answer do I get from the board? I am sorry; this is a bit of an appendage to my presentation today, because I got the answer yesterday and I am going to table the answer with you and with the ministry, perhaps Bernie Webber or someone who is here today.

The answer does not differ very much from the verbal answer I got when I was on the board. The answer says: "Why didn't you do more about it yourself when you were on the board? Don't worry about it." I am paraphrasing, but that is basically what it says.

I am going to conclude. I am going to see if you can follow what has happened in Ottawa; if you can follow it, you are doing much better than I and, I suggest, much better than the seniors, many of whom are quite elderly, to whom this has happened.

Say you are a senior who has contracted with funeral home A—that is what has happened; they contracted with funeral home A. You get a letter in the mail from funeral home B, which has purchased funeral home A. Bear with me. Funeral home B is now saying to you: "We're not going to provide the services to you. We've transferred, without your permission and unilaterally, your funds to funeral home C." The letter arrives at your home on funeral home B's letterhead but in funeral home C's envelope, with no explanation, by the way, that there might be a shortage in your account. This, with the blessing of the Board of Funeral Services.

By this time, let us assume you have followed so far what has happened and let us remember we are dealing with senior citizens, let us assume you have the fortitude—and not many do, although we have three clients I will mention in a moment—to inquire what is going on with your money and you ask for a return of your funds. You will get the return of your funds on a cheque

issued by funeral home C. You never contracted with them in the first place, and there is no accounting explanation, just the cheque and a total amount.

Enough said on that situation for the time being. We have a solicitor advising us and we are going to act on three clients who, by the way, do not have the resources themselves to take on this thing—and Mr Posluns mentioned yesterday it may be even more complicated with new legislation—to go through three or four hearings, to question what has happened, and is there a shortage in their accounts. I am saying yes, there is.

What I am saying, in conclusion, on the subject of the Board of Funeral Services is let us be careful. Let us choose people who are serious about the appointment. Let us not choose people simply by political persuasion and let us make sure they are there to do a job and to do it properly on behalf of you, the Legislature, on behalf of the consumer and, indeed, on behalf of Ontario funeral directors.

I thank you for the opportunity and if there is some time left, I am quite open to any questions you may have.

The Chairman: Thank you, Mr McGarry. I would urge members to address themselves to the content of the brief rather than the messy affair in Ottawa.

Mr Tatham: I will put the question to you, Mr Chairman. What should the man have done? That is the only question that comes to my mind. If it has gone on, why was something not done then?

The Chairman: Perhaps we could discuss the makeup of the Ontario Funeral Services Board as a principal. This could be a bottomless pit. I do not think we are in a position today, in five minutes, to get into that discussion. I just do not think it would be helpful for anybody.

Mrs Cunningham: I will just follow through with that, and definitely staying away from the situation in Ottawa. If you take a look at the explanatory notes in Bill 30, they talk about the features and a number of them refer to the Board of Funeral Services. The only recommendation that I have heard you make very strongly, and I think it is a good one, is on the quality of the people we appoint. Is there any other input that you want to have into regulations? The one that you have mentioned is one that varies from time to time, which we all share, but is there anything specific that we should be adding or changing in the bill or regulations?

Mr McGarry: I did listen very carefully to Mr Posluns's presentation yesterday and I think he raised a very valid point about the process. I think it is too cumbersome for the average consumer, and the average consumer, I repeat, is usually a senior citizen, many of whom of course are quite capable, but some of whom are not. I think we should review Mr Posluns's presentation to this committee.

Mrs Cunningham: The other one is one of a practical nature and I have asked the question before. When we are talking about the telephone solicitation, which people are obviously annoyed about, I have had some letters in my office where people have said, "It may not be a good thing but I want to be able to have someone perhaps telephone me if I have asked them to." How does it work in your business? Surely this word-of-mouth stuff works best.

1110

Mr McGarry: I think it does. Many of us focus our advertising, in fact, on prearranged funerals. In our own company, if I may say so, that is our entire focus. We encourage people to phone. They do.

Mrs Cunningham: To phone you?

Mr McGarry: Yes. They call us and then they come in. Indeed, some leave and shop at our competitors and some come back and some do not; they are happier with our competitor. Thankfully, some come back. People are comparing much more than they used to and we can focus our advertising. It does not require a telephone call from us. I just do not think it is necessary.

Mrs Cunningham: So if someone were to say to you, "You did a wonderful job and I really appreciate being here. My sister is looking for this kind of a service and wants to make arrangements in advance and we would recommend you," you would say to that person, "Tell your sister to phone me," but you would never say, "I will phone your sister," even if you are asked to? Is that correct?

Mr McGarry: That has happened, indeed, that type of referral, if you call it a referral; it is more of a comment really. Our position would be, "Would you kindly, first of all, have your sister call?" We would prefer that, but if there is some hesitancy in that, then we would ask her to at least let her sister know we are calling. It is very rare that we do call. If it is insisted upon, we will, but we would hope that person has knowledge that we are going to call.

Mrs Cunningham: Given the way the bill is written right now, you would not be able to call.

Mr McGarry: I understand that.

Mrs Cunningham: Perhaps we should be looking at that.

Mr McGarry: Yes, I would agree.

Mr Haggerty: I do not want to direct a question but I want to get some clarification. In the conclusion on page 5 you said, "However, in the debated area of funeral home/cemetery combinations, why not let the public decide by way of their support. At the same time, if cemeteries are going to be allowed to have funeral homes, then let us maintain a level field by allowing funeral homes to have crematoriums." Could you be more specific in that area?

Mr McGarry: Yes, I am sorry I did not cover that very paragraph. I felt, and I guess we are, that I was running out of time. I do say that if combinations were allowed, then the flip side of the coin must be, in my view, allowed too. That is, funeral homes should be allowed to have crematoriums. Our own firm—I think it is in the brief—looks after approximately 1,300 to 1,400 services a year, approximately 400 of which are cremations.

A lot of our families, frankly, do not care where the cremation takes place. They are taking the ashes off to wherever and would be quite satisfied to have the option of having it done by Hulse and Playfair. So I guess what I

am saying is if cemeteries are going to be allowed into "our field," then I guess we had better be allowed to be in theirs too.

Mr Haggerty: I am not aware of that in the act. Maybe you could pinpoint it?

Mr McGarry: It is not. I am suggesting it.

Mr Haggerty: The "if" means quite a bit there.

Mr McGarry: I am suggesting that. Combinations are not in the act either. I am suggesting if ever it were going to be allowed, and I do not think it is going to be, this time around at least, I would hope both sides of the equation would be looked at.

Mr Haggerty: You are not aware of any cemeteries that do have funeral homes or chapels on the grounds?

Mr McGarry: Many of our cemeteries have chapels on the grounds now. Yes, they do, and quite often there are committal services, as we use the term, on cemetery property, even the funeral service itself. But the service is conducted by a funeral home offsite. The cemetery does not look after the arrangement, except to provide that chapel.

Mr Haggerty: The previous presentation made to us talked about the level field of taxation. Should the chapels in cemeteries be assessed?

Mr McGarry: Our view is yes, they should.

Mr Farnan: I have a question on the composition of the board. It has always struck me that professionals regulate themselves best. Other delegations have brought up the issue of funeral bereavement professionals being the majority on the board. I am at a loss as to why you would not be asking that they compose the board. If the board does not live up to an expectation, etc, with professionals running it, then there is a need to look at alternatives.

If you ended up asking for a majority on the board—maybe you could talk about that a little more—my own personal view is that professionals, in whatever area, are the best agents to monitor ethical standards and standards of service within their organizations. I would presume that is true of funeral services as well as anything else. Would you comment?

Mr McGarry: Yes. I agree with your statement and I think the majority should be. However, I think in this age of consumer participation, it is valuable—and having served on the board, I found it valuable—to have the perspective of someone removed from the everyday routine, if I can call it that, of funeral services. Some very fine lay people have served on our board and have helped us. However, I do think if we can—and I think we can—be responsible people, and we are generally, then the majority of the board should be funeral directors.

Mr Farnan: That is your recommendation?

Mr McGarry: Yes, it is.

Mr Farnan: I wanted to be clear on that.

The Chairman: Thank you for your presentation.

The next presentation is from the Ontario Catholic Cemetery Conference. We have Reverend Father Kelly, Mr O'Brien, Mr Martin and Mr Howard. We welcome you to the committee and we look forward to your presentation. Please introduce yourselves. We think we know one of you; we are not too sure of the others.

ONTARIO CATHOLIC CEMETERY CONFERENCE

Father Kelly: On my left is Robert O'Brien, the director of cemeteries for Hamilton, who is the president of the Ontario Catholic Cemetery Conference. On my immediate right is Ed Howard, who is from the diocese of London and is on the executive of the Ontario Catholic Cemetery Conference as well; and Earl Martin, the general manager of Toronto Catholic Cemeteries, who is also on the executive of the OCCC. I am Father Ron Kelly.

First of all, I would like to express sort of an informal gratitude on behalf of all the members of the Ontario Catholic Cemetery Conference for the opportunity of being here today and presenting some of our views, some of which may seem a little different, some a little stronger than others.

What we have really done in the last two to three years is met with people from all over the province of Ontario representing Catholic cemeteries, and as the new legislation was coming forward and as the studies were going, we tried to evaluate and assess it. As you can imagine, the needs were sometimes very different; the needs of a small northern community may be far different than those of Toronto. What we tried to do was pull together a consensus that somehow represents some of our thoughts and concerns.

The Ontario Catholic Cemetery Conference is a registered corporation in the province of Ontario. It represents the dioceses of Alexandria-Cornwall, Hamilton, Hearst, London, Moosonee, Pembroke, Peterborough, St Catharines, Sault Ste Marie, Thunder Bay, Timmins and the archdioceses of Kingston, Ottawa and Toronto. These member dioceses span the entire province and represent a large proportion of the population of Ontario.

The conference was formed to facilitate communication between the Catholic cemeteries of this province and the municipal and provincial governments.

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The burial of the dead has long been a sacred work and duty of the Roman Catholic Church and long predates the existence of our various jurisdictions of government. Burial in a Catholic cemetery is a natural and logical extension of the spiritual home of a Catholic during life: the parish church. The rite of Christian burial is symbolic of the hope of the resurrection that is an integral part of our faith.

Up until the end of the last century, most Catholic parishes in Ontario had cemeteries adjacent to or near their churches where members of the community of faith were laid to rest. Given the large Catholic population in Ontario and the scarcity of land available, it became increasingly difficult to accommodate burials in the local parish cemetery. For this reason, the Catholic Church saw fit to establish larger regional cemeteries to serve communities of several parishes in particular areas.

I might point out that this is not to imply that parish cemeteries do not exist. There are still many places in rural Ontario where we have parish cemeteries, but in the large metropolitan areas such as Ottawa, Kingston, Toronto, London and Hamilton we have had to go to regional cemeteries.

Long before perpetual care funds came to be, the Catholic Church was providing for long-term care and maintenance of our cemeteries. Their good care is a sign of our love and reverence for those who have gone before us. Our cemeteries are not only a resting place for the deceased members of our community, they are a place of prayer and a place of reflection for the living.

The Ontario Catholic Cemetery Conference believes that it is very important that we pass on this great tradition of care to future generations. For us, the care and burial of our dead is not a business venture, it is an opportunity for us to ensure that the Catholic tradition of care is continued.

The Ontario Catholic Cemetery Conference is most grateful for the co-operation and the consultative process which the government has provided to us. On behalf of all the OCCC members, I would like to thank the members of government who have been instrumental in seeing the necessary legislation come to be. We would especially like to thank Eric Tappenden and his staff for their gracious co-operation with us. We would also like to thank the Liberal, Progressive Conservative and New Democratic parties which have shown us great consideration in allowing us to voice our concerns.

We are most grateful for the opportunity to present our concerns to your committee here today. From the perspective of Catholic cemeteries, the new act is in general a very positive development. However, like a lot of others, there are a few areas of concern which we would like to address today.

Areas of concern. Section 23, the buyback of interment rights: This section involves the buyback of interment rights any time after purchase. It requires the refund of 100 per cent of the original value of the interment rights or 50 per cent of what the interment rights are worth at this time.

The enactment of this legislation would result in an accounting nightmare, because income from sales subject to section 23 could not be considered current revenue for the cemetery, as any contract entered into would be considered open-ended. Instead of legislating this section, the ministry could ensure that each cemetery has a policy on the return of interment rights that is acceptable to it. In other words, in short, what we are saying is we are not opposed to the rule, we are just nervous of it being in the legislation as such.

Care and maintenance funds at 50 per cent of sale. The adoption of this legislation would have a detrimental effect on the cemeteries' ability to carry on day-to-day operations. The present scale of 35 per cent for grave sales and 20 per cent for mausoleums, we feel is sufficient. Our experience has proven that a more than adequate level of care can be provided with these present amounts. In outlying regions, where land costs and thus grave prices are lower, it might be necessary to implement a minimum charge for perpetual care.

As previously stated, caring for our Catholic cemeteries is an important part of our faith and an expression of the reverence and respect held for those who have gone before us. The Catholic Church has a special understanding of the need for a care and maintenance fund.

The selling of cemetery supplies and services: We wish to make it very clear at this point that we have no particular dispute with the Ontario Monument Builders Association or with any other monument manufacturer. We do not intend to compete with monument manufacturers. However, it is the feeling of our body that we must keep our right to sell grave makers and monuments as they provide an important source of income for our cemeteries. We do not believe that our involvement in monuments threatens the monument manufacturers in any way.

Since the Ontario Monument Builders Association spoke just ahead of us, we did some surveys recently ourselves. We have found that very few of our cemeteries sell upright monuments themselves. It was certainly decided within our group that the monument builders would have a fair shake at selling any monuments in our cemeteries, either through us or themselves directly. There is no intention on our part whatsoever to block their sales.

Section 29, telephone and door-to-door solicitation: The telephone solicitation method for selling interment rights has proven to be an extremely sordid sales method. It has been a source of great pain and distress to people and has, in our view, caused a great deal of damage to the industry at large. Death and dying are extremely sensitive and personal issues. Telephone solicitation is an acceptable method, maybe, for the sale of encyclopaedias but not for plots or mausoleums. I am not even saying we agree with encyclopaedias, but I am saying it is certainly a different scenario altogether.

Door-to-door and telephone solicitors are typically paid on a commission basis and thus are under great pressure to sell their product. The pressure is then put on the consumer. We do not believe that the public needs to be harassed by phone calls or door-to-door solicitors about something this sensitive. The public can be made aware of pre-need arranging through other means of communication such as newspaper and radio ads or television spots.

Section 33, care and maintenance trust funds: We believe that some religious organizations should be exempt from the care and maintenance trust fund regulation that maintains an outside trustee must be hired to manage the fund. If the administration of the religious denomination is willing to guarantee the funds, it should be permitted to manage the funds internally. Our view is that the hiring of a trustee is an unnecessary expense. The fund will still be subject, in our opinion, to the same governing rules and conditions as the maintenance funds and trust funds throughout the province.

Section 35, the use of care and maintenance funds: As a nonprofit charitable organization, it would be at times serviceable to borrow from our own care and maintenance funds to purchase lands etc for future development. We do not see this as a regular occurrence, but given the escalating costs we are forced to pay and interest rates of 13 per cent plus, which is what they are right now, this type of arrangement would provide us with some constructive, practical options.

I would just like to speak to that for a moment and say that when you are serving the public and there are trust funds and you have to borrow several million dollars to buy land to accommodate their burial, on the one hand to be paying out 13.5 per cent interest to banks while you purchase this land and on the other hand to be receiving 10.5 per cent interest for money you are holding, and you are a viable, strong organization, I believe that saving could be passed on to the consumer. I also believe that would be subject to approval of the ministry. In other words, the particular

organization would have to be able to guarantee the funds, not just simply say, "We will pay them back." There would have to be proof that it is financially credible and responsible. But instead of the banks making the one per cent or two per cent, I think those in the cemetery sector would have the opportunity to receive some of the benefits.

1130

Section 36, pre-need assurance trust funds: We see the 100 per cent trusting of all moneys received as very high. We understand the need to ensure that pre-need trust funds are maintained, but we also recognize the associated costs that are incurred in their maintenance. We deem that the present rate of trusted is reasonable at 65 per cent.

Section 39, the concept of one-stop shopping or, as it is sometimes called, combinations: We have listened to and heard many of the briefs on combinations. I must add a personal note here: I have been somewhat astounded by some of them representing some of our own faiths. We would like to state that the legalization of one-stop shopping would have a detrimental effect on the community as a whole and it would especially have a detrimental effect on religious denominations in particular.

The religious service in the place of worship is an integral part of the grieving process, especially in Ontario. When the funeral home is located at the cemetery, it becomes very inconvenient and more expensive to have the religious service in the place of worship, given the extra time and expense involved in transportation. The religious service in a parish church, a synagogue or wherever it may be will eventually become a luxury only available to those who can afford it.

We also have great concern that one stop-shopping would foster a concentration of ownership and a lessening of competition throughout Ontario. There are numerous family-run funeral homes that have been in existence for hundreds of years providing care and comfort to generation after generation of families. We feel a strong need to protect their rights as they have always maintained a great reverence for the religious and cultural beliefs of the people they serve. In our opinion, the legalization of one-stop shopping would virtually help to obliterate the small, family-run funeral home.

We have gone into one extra area here that is not really part of the legislation, but we think we should get a shot in while we have you captured. Considering the last time this legislation came up and the next time it may come up, we thought we had better take advantage.

Given the ever-spiralling cost of land in urban centres of Ontario, it is no wonder that we are concerned about the cemeteries of the future. At present we are burying people in lands that are worth more than \$500,000 per acre and upwards. And I mean upwards; there are many places where you could almost hit or pass the \$1-million-an-acre mark. What happens when these lands run out? If we are forced to pay the inflationary prices for new cemetery land, that cost is going to be passed on to the consumer one way or another; it has to be.

We would like at this time to encourage municipal, provincial and federal governments to make lands available for cemeteries. These lands could be developed as cemeteries while still providing green space areas in our community and being very beautiful and contributing to it. An example of this is the lands owned by Ontario Hydro. There are huge Hydro corridors running

through Toronto where the lands are virtually useless to the public, and yet sections of them could be used for cemetery lands, without encroaching on Ontario Hydro's rights for the wires. There are huge holdings of lands alongside our parkways and highways.

Some of you may have noticed what they have done along the Gardiner with the commercial signs, how beautiful that has become. Take that a few more steps: Some of the areas that are zoned green space could be done as equally beautifully for cemeteries, thus passing on a tremendous cost-saving factor to the consumer and also helping to beautify some of our areas.

We ask you to seriously consider this proposal. If nothing can be done to combat the ever-increasing costs, we will have our people driving several hundreds of miles to bury their dead.

We would like also to ask the provincial government and of all members to help us in dealing with municipalities. We are finding it extremely difficult on occasion to deal with municipalities and to operate our cemeteries with the bylaws that are sometimes imposed.

Again, just to share a brief example of that, there is one community right within the Metropolitan Toronto area that has passed a bylaw banning cemeteries. My question is, where do they expect to put their dead? Are they saying to another municipality, "That's your responsibility?"

I think that type of legislation must be looked at. I think that in a province like Ontario, where the history is so faith-oriented to all different religions and cultures, to say to our people, "We can't provide a space to bury you after serving your life here," is almost an insult.

Once again, I would like to thank you for the opportunity of expressing the concerns of the Ontario Catholic Cemetery Conference. Great sensitivity has been shown by the ministry in writing the Cemeteries Act and regulations. I assure you of our complete co-operation for the implementation of this legislation.

The Chairman: Thank you. We have about 10 minutes left. Mrs Stoner, Mr Farnan, Mrs Cunningham, Mr Tatham and Mr Haggerty all would like to speak, if they would exercise some self-discipline.

Mrs Stoner: The first section that I would like to respond to is section 29 and the telephone and door-to-door solicitations point. We have heard, and heard particularly yesterday, from a lady whose parish priest provided her in the Toronto area with a list of parishioners that she should phone. Will you comment?

Father Kelly: My answer to that, on behalf of the OCCC, is that I think the Ontario Catholic Cemeteries Conference would consider that outrageous. I can assure it is not with the permission of the Ontario bishops, who met yesterday and discussed this legislation at great length. We are all—

Mrs Stoner: Were they aware of what we heard yesterday?

Father Kelly: They were not at that time, but some of them were made aware today.

Mrs Stoner: Good.

Father Kelly: They were appalled. It is not our practice to give out our lists and it is not our practice to give them to anybody to harass our people. The only thing I can assure you is that matter will be looked into.

Mrs Stoner: Thank you. I appreciate that very much.

I commend you for the points you made when dealing with section 35 and the points you made about the ability to access trust moneys for purchase of land with approval and obviously with parish involvement. I think you make a very valid point there.

Finally, to move to page 6, I commend you for your innovative look at the problem of land and land costs. I wondered if you had had any various preliminary sorts of discussions with Ontario Hydro specifically about the possible conflict. I am just concerned that they might want to enter on the lands, after you have utilized them, to erect new poles or to maintain poles. Have you had any discussion at all on that?

Father Kelly: We have among ourselves, and we have sounded out some of their people. We have not gone to great depth yet, but we are hoping to. I am sure there are areas in their lands where they would say, "You cannot bury here." But I am also sure in those hundreds and hundreds of acres there would be many acres where you could bury and not infringe on their things.

I also think that lawyers for the province, for Hydro and for cemeteries would have to work together to draw up all sorts of agreements where there would be protection for the consumer and for Ontario Hydro and they would not be at risk. The same would apply with many of the park belts along our highways and that sort of thing.

Mrs Stoner: I see it as a very complementary use to parklands, to open space. I just want to ensure that there is an opportunity clearly for them to use the property for the purpose for which it was purchased, but on the other hand, I think it is an excellent suggestion and clearly not one that will be dealt with in the legislation. But I hope that you will take it upon yourselves to keep the ministry and the members who are interested in this informed on the progress you make on that, and if we can help in any way, I would be particularly interested in trying to participate in that.

Father Kelly: Thank you very much. We will be in touch with you on that.

1140

Mr Farnan: Reverend, you heard the presentation immediately ahead of you from the OMBA.

Father Kelly: Yes.

Mr Farnan: The suggestion that was put forward was that tax-free status should prevent a nonprofit from selling upright monuments. Taxpaying organizations such as private cemeteries, funeral directors and monument builders would be allowed to sell upright monuments. That was the suggestion.

In your brief you expressed a sensitivity to small business. You also suggested that you had no beef with the OMBA. Then you had the clincher in there: "We do not intend to compete with the monument manufacturers. However, we must maintain our right to sell grave markers and monuments as they provide an important source of income to the cemetery."

How do you react to the suggestion immediately preceding it?

Father Kelly: If I may first of all refer to the nonprofit question, you sometimes get almost a little tired of hearing about the bad, nonprofit people who do not pay anything. We have been burying people in the province of Ontario since the 1600s. We have never gone to government and asked for five cents in any case. In many cases we have taken good church lands, at a great loss to the church, to bury people. We have never asked for subsidies in any special way.

I say to you, sir, when we buy our monuments, who do we buy them from? When we sell them, who do we collect sales tax from? You say to us that the cemetery must be responsible if a monument falls over and a child or a family is going to sue because of being injured. If we are going to be responsible then we must have some control, and that control must be strong.

What I point out is, we are very sensitive to OMBA, and in our own studies we find that selling monuments is not a big business in Catholic cemeteries. There are a few—and that is why we ask—that depend on it. In general, across the province we found that very few are selling any great amount of monuments. They are selling markers because they themselves wish to install them, and they again buy them from suppliers and they are a great source of revenue.

I say to you, at the cost lands are going, the nonprofit cemetery will not be around 50 years from now if governments, municipalities and nonprofit people do not work together to provide them, and I think it is a right. I do not think we have an unfair advantage. We have the regulation in almost all our cemeteries that any monument builder, where upright monuments are sold, has the right to sell the monument.

Mr Farnan: If indeed there is such little activity in this area, why would you be reluctant to support the suggestion of the OMBA?

Father Kelly: Because if I represent the entire province, and we have cemeteries in some parts of rural Ontario that depend on that for an income, then I as the chairman do not have the right to say we would write that off. It may be a necessary source of income. What I am saying is, I do not think it should be the threat to OMBA that it comes across as.

Mr Farnan: The other thing I will just say as a comment, as a New Democrat, I and my party have a tradition of supporting nonprofit organizations. However, I think as New Democrats, we also have an openness to look at situations. I do not think anybody should be uptight or defensive if indeed what is being done is good and valuable and can stand up to scrutiny.

The other question I would like to ask you concerns page 5 of your brief. I do not have a background in finance, and perhaps you will explain this to me. I understand basically what you are talking about in terms of the 13 per cent and the 10.5 per cent and the advantage of loaning money to yourself as opposed to going to the bank. That makes sense to me. But how does that play off the larger players as opposed to the smaller players and those who cannot guarantee the funds with those who can? I am not talking about your organization now; I want you to understand that. Does this kind of legislation lend itself to corporate concentration in the long run?

Father Kelly: No. If I may, I would say that there are many organizations and many cemeteries within our own organization that could not

qualify for this. I do not think that is to show favouritism; I think that is to show responsibility to the people who put money in perpetual care. If the institution itself, through its properties and what it has, is able to guarantee the money, then I think the people who have perpetual care money are protected.

I think the same thing would apply to the rules when you invest. It is like saying, "You can only invest in blue chip stock." Is that showing favouritism to the big corporations of Ontario? I do not think it is; I think it is protecting the consumer and I think this is very much the same.

To lend perpetual care moneys without guarantees would be irresponsible. To lend perpetual care moneys with guarantees and to pass on the saving to the cemetery would be responsible. I think it does not fit all cases.

If I seemed uptight, I apologize for that. That was not my intention.

Mrs Cunningham: In your areas of concern, you started out with section 23 and my guess is that it is probably one of the greater areas of concern. You mention at the end of the first paragraph on page 3 that, "Instead of legislating this section the ministry could ensure that each cemetery has a policy on the return of interment rights that is acceptable to them." That is a good idea, but I do not think it is a simple matter of putting what is now in the legislation into regulation. That is not your intent, is it?

Father Kelly: Yes. What I am saying is that in the past, for example, our own cemetery association in Toronto—and that is not the example for the province; it is simply ours—we have pretty much the same rule that you are asking for and we have always had that. We have it in our brochures that it is 100 per cent or 50 per cent and that there is a fair return.

Our only concern with it being in legislation is that once it is there, if it becomes unreasonable to work with—you see, we can get auditors' opinions to say, "You do not have to show it as open-ended." Two years from now, somebody tests that because there is a problem and then the auditors say, "You must show it as money that may have to be returned," and your whole bookkeeping process is changed. My point there is that it may be more effective if that rule or a similar rule must be a rule of each cemetery and that must be approved by the ministry.

What I am saying is that I agree with the principle. I cannot say I am against it being in legislation but we have doubts about it being in the legislation. We would like more clarification than that.

Mrs Cunningham: Some people have told us that they actually may go out of business if these kinds of things are written into law.

My other point is that you are a nonprofit group and others may not be able to make the same kinds of commitments, depending on what they sell the plot for in the beginning and in other circumstances. I am trying to look for a response that will meet everybody's needs and I like your suggestion but I do not like the hard numbers. Otherwise, other groups may have other arrangements that people sign into when they buy a plot—they may be perfectly legitimate—that people are happy to sign away.

I am just wondering if you would be more flexible when you talk about this policy with regard to individual businesses—because these are

businesses—coming up with policies that the ministry could look at and buy into if they were reasonable given their circumstances.

Father Kelly: I think that would be acceptable. I think we would have to have the confidence in the ministry that it would make sure it was a reasonable payback to the consumer.

Mrs Cunningham: Yes.

Father Kelly: Sure, I do not see that as a problem.

Mrs Cunningham: Some companies may have bigger experiences of people who have to buy back or get out of the arrangement than others, for whatever reason.

Father Kelly: That is correct. I have to say that it has not in the past been a problem. Whether it will be or not, nobody knows, but I do not think any organization has suffered a big rush of returns. However, what you are saying is quite correct, and I would like to see it at ministry level with the regulation approved by the minister and some flexibility with it.

Mrs Cunningham: I guess I am pushing a little bit because I see such a different trend, unfortunately, in family traditions and what not. I think you are able to hold yours and people respect you and admire what you are able to do with your faith—people coming long distances home again. But in many instances now, realistically in Ontario, it is not happening the way it used to. It has become more difficult.

I would like to see a law that would meet the needs of the future so we are not having people anxious for the next decade around what we are going to write next so there is some stability in this. One does not want to refer to it as a business but it is a business.

1150

Thank you for an excellent presentation. There are obviously more questions I would like to ask. May I have just a quick one on the telephoning? I have asked it before. No one wants to be bothered with people telephoning them around these kinds of things, but I asked the question of a couple of previous delegations. I have had a number of calls, surprisingly I might say, in London, saying: "I made my arrangements through my church because someone phoned me. I asked them to or a neighbour asked them to."

It is not just the church, by the way. It happens to be someone in the community, and again I underline I was surprised at the correspondence but, obviously, they must have felt strongly. I think it is a very strict law we are passing right now when we say you can never phone anybody. I am just wondering, in your experience, you sometimes are not asking someone to make a phone call on behalf of a family.

Father Kelly: I could see it happening. I could not see it as a regular occurrence, but I could see somebody contacting the parish priest and saying, "Could you have somebody from the cemetery give me a call?" The legislation is very strict. I think what we would have to do in that case now, in my understanding, is just mail them out a form.

Mrs Cunningham: You would send a letter instead of making a phone call.

Father Kelly: That is what we would have to do under the new legislation. In the past, we did not do any solicitation but I am sure if somebody asked us to call them, we did.

Mrs. Cunningham: But a personal letter.

Father Kelly: Sure.

Mrs. Cunningham: That is a suggestion. I could write that back to my constituents. It seems to me that it is more of the same, though, and we are not recognizing the realities of today.

The Chairman: I thank you and your colleagues for your presentation before the committee. As you can see, we could talk to you for a long time.

The final presentation of the morning is from the Ontario Historical Society. I recognize Dorothy Duncan who is here. Members have the brief. Welcome to the committee. Please introduce anybody else who might be with you.

ONTARIO HISTORICAL SOCIETY

Mrs. Duncan: I would like to introduce Christine Carroppa, the president of the Ontario Archaeological Society whom I have invited to join me here in case there are specific questions that she can answer and I cannot. A brief introduction: My name is Dorothy Duncan and I do represent the Ontario Historical Society here this morning.

The Ontario Historical Society was founded in 1888 as a nonprofit charitable organization to bring together people from all walks of life, all age groups and all cultural backgrounds who are interested in preserving some aspect of Ontario's history.

The membership of the Ontario Historical Society today comprises approximately 3,000 members, including organizations and institutions such as museums, historical societies, local architectural conservation advisory committees, archives, schools and libraries, as well as interested individuals and family groups, so that our direct membership of 3,000 actually translates into about 100,000 people around the world who are interested in some aspect of this province's history.

The membership brochure in your information kit gives you some information about us. Perhaps I could just for a moment comment on the kits that I have distributed. They contain our membership brochure. They contain a workshop flyer which shows you the type of educational programming that we try to do in communities about cemeteries. It also contains a directory of heritage organizations and institutions in Ontario. This is the constituency that I represent this morning. Approximately 1,200 organizations and institutions are listed here and then it contains some correspondence between myself and the Ministry of Consumer and Commercial Relations and also some letters of support we have received for our position. I know that you have already received letters and are going to be receiving many more.

I want to thank you for giving me an opportunity to speak to you about Bill 31, for many of the proposed changes to the Ontario Cemeteries Act will have a serious and far-reaching effect on those of us working in the heritage field and the public that we serve.

As you know, there are approximately 5,000 known cemeteries and an

unknown number of burial sites and cemeteries in the area that is known today as the province of Ontario. For the heritage community, these burial sites and cemeteries contain a unique record of the human occupation of the land, its settlement patterns and the social history of both the first nations and the newcomers to the area.

Some of the known cemeteries are suffering from neglect or abandonment, vandalism and theft as well as being victims of their environment. Factors such as air pollution and acid rain are hastening the deterioration of some grave markers, leading to concerns about public safety.

In our opinion, there are a number of complex issues to be resolved in any new legislation: moral, ethical, historical and educational. There are a variety of interests in safeguarding the public, the maintenance and preservation of cemeteries and also in serving the consumer. The heritage community is a consumer in two ways. It is a consumer in the aspect that the Ministry of Consumer and Commercial Relations has spoken and is concerned about, but we are also consumers of history and it is this consumption that I would like to elaborate on in my presentation, for we are all consumers of historical information so that we may in turn use it to interpret the history of Ontario for both our residents and our visitors.

The peoples of Ontario, whether first nations or newcomers, share the common tradition of honouring our dead by setting aside areas where they are buried. In many cases, possessions were and still are buried with them because of religious beliefs or sentimental reasons. The geographical location, the placement of the deceased and the artefacts that accompany them are all invaluable sources of information to their descendants, researchers, scientists and archaeologists.

Many of the early graves were unmarked or simply marked with spirit posts, spirit houses or symbols demonstrating the interests or the prowess of the deceased. With the coming of Christian missionaries to this area in the 17th century, simple wooden crosses sometimes marked the graves of both natives and, of course, later pioneer settlers. There are many cemeteries, particularly in northern Ontario, where fragile wooden markers are the only markers that still exist.

About 1830, when professional stonemasons arrived in the province, grave markers of soft white marble, slate and sandstone began to appear. These early carved markers and all those that followed have again provided invaluable information to researchers, historians and genealogists, particularly for the period prior to 1869 when the first legislation was passed requiring births, deaths and marriages to be recorded by a provincial registrar.

Because many gravestones contain information that does not exist anywhere else in the world, the clauses dealing with moving and removing markers are of particular concern to us. As you know, as Ontario has grown, many more cemeteries have developed, often in close proximity to churches or other places of worship. Today our cemeteries are mirror images of our communities and they reflect the rich cultural and historical influences and diversity of people who have come from all over the world but today call Ontario home.

We, the heritage community in Ontario, recognize cemeteries as a source of historical and cultural information that cannot be found or duplicated from any other source. For that reason, the maintenance and preservation of our

existing cemeteries and the preservation and interpretation of the many unknown burials and cemeteries that we know will be uncovered in the future is of primary concern to us.

We recognize that this challenge is a very complex one and that it will require innovative solutions to address just the few concerns that I have listed in my brief; there are many more.

There are the concerns of archaeologists, licensed by the Ontario Heritage Foundation under the Ontario Heritage Act, who invariably encounter human remains in their excavations. These can range from a single bone to bones that have been carved or burned. They can be bundle burials or ossuaries, which are secondary mass burials of peoples. Archaeologists must have clear definitions in any new legislation so that their findings, actions, legal responsibilities and livelihood are clearly understood.

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Museum curators, social historians and genealogists are concerned about the artefacts, the funerary art and the grave markers in our cemeteries and that they must remain exactly where they were originally placed to ensure the accuracy of their research. The Ontario Genealogical Society, for example, is currently undertaking to record the information on every marker in every known cemetery in Ontario and to publish its findings for other researchers.

I have brought with me this morning, just as an example of the kind of thing the Toronto branch of the Ontario Genealogical Society is doing, a directory of cemeteries it has undertaken in York county and many of the books that are being published on each individual cemetery in the Metropolitan Toronto area. This is the kind of research and publication that is going on right across the province by different branches of the Ontario Genealogical Society.

LACACs, the local architectural conservation advisory committees appointed by municipalities under the Ontario Heritage Act, are concerned that changes to the Cemeteries Act will jeopardize those cemeteries that have already been designated or are in the process of being designated for their historical or architectural significance.

Educators who are using cemeteries for curriculum development and as learning laboratories where students study mathematics, language arts, science, geography, art and appreciation of the skills of early craftsmen fear that new legislation will destroy pioneer and historic cemeteries as a teaching resource.

Again, I have brought with me a series of books that has been developed by the North Erie Shore Historical Society. There is a great pile of these; I have brought only a few so that you can see them. They are undertaking an individual cemetery history and monument inscription project for the cemeteries in their area. In addition, I have a computer printout from Brock University showing the kind of research it is doing on cemeteries in the Niagara area. It is a very comprehensive document. Perhaps you will have a moment to look at it.

This very briefly, and not completely, is the type of concern that the heritage community, the consumer that I represent, is concerned about.

The Ontario Historical Society learned about Bill 31 quite by accident

in mid-July. We wrote immediately on 18 July 1989 to the Honourable William Wrye, who was then Minister of Consumer and Commercial Relations, urging that because of the tremendous interest in cemeteries as historical resources, consultation with the Ministry of Culture and Communications should take place on this important piece of legislation.

The Honourable Gregory Sorbara replied to my letter on 11 August, indicating that a meeting had by then taken place on 25 July with the staff of the Ministry of Culture and Communications concerning the regulations. As you know, by that date, the bill had had second reading and it had been referred to your committee. So the results of any of those discussions are not yet included in this bill.

In addition, since we learned about the bill in mid-July, we have contacted approximately 300 heritage organizations in both northern and southern Ontario to determine if we were the only group in Ontario that did not know about it. We found that none of those organizations or institutions had heard of its existence, except one.

We have learned this week that there appears to have been a discussion paper circulated. Unfortunately, the community I represent did not receive it and did not have a chance to take part in those discussions. There appears to have been no public consultation about heritage components, and there are representatives of many historical groups who are here today or are monitoring these proceedings in their offices or homes on their televisions. They would have liked to have made presentations at this hearing, but because you already had a full agenda, it was impossible for them to do so.

I believe that by now you have received the brief of the Canadian Association of Professional Heritage Consultants, a very full and large brief addressed to you on this matter. They would have liked very much to have been here and made a presentation as well.

As you know, the Ontario heritage policy review has been under way since 10 July 1986, when it was first announced by the former Minister of Culture and Communications, the member for Hamilton Centre (Ms Oddie Munro). This policy review, the most extensive ever undertaken in Ontario to identify, interpret and develop a provincial heritage policy, has focused on discussions with both the citizens of Ontario about our heritage and other provincial ministries to develop complementary policies and programs.

The heritage community understands that those discussions are now complete and we look forward to the announcement of the new heritage policy and the new Ontario Heritage Act in time for the celebration of Ontario's heritage years, from 1991 to 1993, which will focus on the founding and the development of the province of Ontario. Therefore, it seems most unfortunate that this legislation is being considered at this time, because, particularly in our view, it does affect a great part of our heritage.

We believe that a new Ontario Cemeteries Act must, in its opening clauses, address the heritage components inherent in all burial sites and cemeteries. We believe the present bill does not. The relationship between a new Cemeteries Act and the Ontario Heritage Act should be clearly defined. At the present time, the document we all have says, in section 87, "This act prevails over the Ontario Heritage Act." However, on Monday of this week, the Minister of Consumer and Commercial Relations (Mr Sorbara) made a verbal statement here that probably section 87 would be qualified to contain an exemption. We are not sure what that exemption might be or how far-reaching it would be.

Definitions must be included in any new act to define for us all the very complex situations that can be encountered in burial sites and cemeteries. Is a single bone a body? Is a single bone, or three bones from three different people, a cemetery?

The existing Cemeteries Act defines damages and vandalism as an offence in this province, and anyone so convicted can be fined. Section 78 and some of its subsections in the new proposed act leave responsibility to cemetery owners and interment rights holders to attempt to recover the amount needed to restore the cemetery. Instead of weakening or removing the sections in the existing act, in our opinion they should be strengthened and fines should be increased as a deterrent to vandals.

Because I realize we are running late, I will not take your valuable time this morning to go over the proposed bill clause by clause. The clauses we are concerned about are listed here. Many other heritage groups have additional concerns about clauses and they have written their concerns directly to you.

I would just like to move to my recommendations. The Ontario Historical Society recommends that Bill 31 be withdrawn and that extensive consultation with the Ministry of Culture and Communications and with the heritage community be undertaken to address the heritage components that are now missing. In our opinion, the regulations will not be adequate to address the flaws and the omissions in the proposed act. Many clauses require extensive rewriting. It is obvious that new clauses need to be drafted. Extensive definitions are needed and the following concerns should also be addressed in any new legislation.

An inventory of all known cemeteries should be undertaken. An inventory of all historic cemeteries and all individual burials designated under the Ontario Heritage Act should be undertaken. Standards for public safety should be developed. Methods of evaluating cemeteries should be developed. Standards for the preservation of cemeteries should be developed.

In summary, I would like to stress that the heritage community believes that a burial site or a cemetery represents an equivalent body of information that can be accessed, analysed and understood, just like a library of books, a museum filled with artefacts or an archives filled with original documents.

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Grave sites and cemeteries are physical manifestations of people who have lived a very rich life and who, through their life and death, have contributed to Ontario's heritage. The Ontario Historical Society requests, on behalf of our membership and the larger heritage community, that any new legislation affecting this rich historical and cultural resource must be developed with care, sympathy and understanding so that the peoples of Ontario may continue to benefit from this aspect of our common history.

The Chairman: Thank you, Mrs Duncan, for what I think members would agree is an important brief. It addressed some very serious matters.

Miss Martel: I stand corrected. Yesterday afternoon, in responding to Memorial Gardens, I said we all agreed that there had been extensive consultation. I see in your case that I have been remiss in that, so I apologize for that comment yesterday.

I am curious, though, when you talk about consultation, that in your phoning about and contacting of the various groups you represent, or many groups you represent, you only found one organization that knew something about it. I guess I would like to ask you which lucky group happened to be aware of the bill and why it did not contact you, for example, if you are the executive director of the whole society. Why was there not any action taken from there until this very late date?

Mrs Duncan: As I said, there was only one group that seemed to have some prior knowledge, and that was the Ontario Archaeological Society. As I mentioned earlier, the president is with me here at the table this morning. Perhaps Christine would like to answer that question: Why did she not alert the rest of us that there was something going on?

Mrs Caroppo: I guess my response is mea culpa. To be honest, the first I heard of this was from the Ministry of Culture and Communications staff, as I recall, in the late summer of last year. So it has been about a year in the process. At that time, I appealed to my membership. We were approached on the archaeological aspects alone. I suppose, in my narrow focus of thought at that time, I did not consider the broader range of the built heritage aspects of cemeteries, which is something Dorothy was elaborating on today.

We were given to understand that we had to respond almost immediately, and my concerns at the time were to reach my own membership. I assumed, perhaps wrongly, that other heritage groups would be contacted by that ministry or by the Ministry of Consumer and Commercial Relations as a courtesy. Obviously, I was mistaken. My membership responded either directly, because of lack of time, or sent briefs to myself which were then worked into a very extensive package of information. I might just note that several of our members live in other parts of Canada, the United States and the world, and many of those, even in foreign places, sent briefs and copies of articles they felt would be pertinent to the considerations before MCCR and so on.

Anyway, we submitted that to the co-ordinator at the time, Marie Fitzgerald, who gave us a very nice thank you letter and promised that we would continue to be consulted in the process. We were caught with our proverbial pants down, I suppose. We believed that and went on faith that we would in fact continue to be consulted. We do not read Hansard—perhaps that is a failing on our part—and were stunned to discover the bill had received second reading in July or so of this year.

We found that out, by the way, from one of my members who, on behalf of Chief Nora Bothwell who was here earlier this week, appeared with her at a local meeting in the Rice Lake area, there found out exactly what was going on and phoned me. I appealed to MCCR to have a chance to meet with them and put down our concerns on paper and face to face, which we did receive just about a month ago, 21 August. It is a long-winded answer, but that is about all I can provide.

Miss Martel: So you were able to get some of your concerns out to them at that particular meeting, I take it?

Mrs Caroppo: As a first cut, yes. Upon reflection and now that the word is out in my community, there are certainly a lot of other concerns that I may have personally overlooked, or other angles, looking at situations and fleshing out—bad pun—the considerations at hand.

Mrs Stoner: I, too, feel it is very unfortunate, Dorothy—and I can address you as that; we have known each other for years on museum boards and LACACs and all kinds of things—that you were not consulted, because clearly the ministry has really tried to consult. Those who have been involved have commended over and over again the process of consultation that has gone on for Bill 30 and Bill 31. I do not expect that your first recommendation, that they be withdrawn, is really realistic, but I do concur that you make some very important points about the need to preserve and maintain and protect our physical heritage within burial grounds and cemeteries in this province.

The concerns you have raised will be addressed. I certainly hope there will be the exemption the ministry spoke of, to whatever degree that will evolve in the very near future, and that we are all made aware of that, and that the aspects of the regulations which deal with the issues you raised will be addressed, and addressed seriously, because you have made some very important points here today.

Miss Martel: The only concern I have with that—I appreciate Norah's comments. If you were not involved in anything to do with the drafting, I am a little worried about what your participation might be in the regulations as well. Not to make it really partisan, I am wondering—on one of your pages you have noted a couple of the concerns you have. For this committee, could you possibly flesh that out and get that to us before we start our amendment process next week to see what we can do from there? If we do not pick it up next week, we may get it into the regs and monitor that, but at least we can make an effort to pick it up by next week.

Mrs Stoner: She will make sure she is involved.

Mrs Duncan: I would just like to comment on our sense of the difference between the act and the regulations. In any legislation it is extremely important that the very meat of it not appear in the regulations. We feel so strongly that the act itself must address the heritage aspects of this, that there must be new clauses that go into the act that recognize cemeteries as an invaluable cultural and historical resource, and that the regulations not be depended on to contain that very valuable point.

Mr D. R. Cooke: I also appreciate your bringing this all to our attention. I appreciate your delineation at the end of your submission of the specific things you wish to see addressed in this legislation, whether it is agreed or not, such as an inventory of cemeteries, an inventory of all individual burial sites, etc. Some of this is not addressed in the sense you are talking about in the complete inventory, although there are some changes in so far as how these things are treated. With the exception of section 87, is there anything else in this act that cries out to be changed right now? Perhaps the archaeologist can answer that question, too, if you had a little more time. In either case, is there anything else we should be looking at here? Mrs Stoner's comments are realistic and some of these other things may need to be looked at in the future, but in so far as changes are concerned, if there is an amendment coming to section 87, as you have been led to understand, is there anything else that cries out?

Mrs Duncan: First, may I speak very briefly about section 87 on the Ontario Heritage Act? In our opinion, there must be absolutely no confusion about the interrelationship of any new Cemeteries Act and the Ontario Heritage Act. We feel very strongly that there should be more discussion and dialogue with the Ministry of Culture and Communications on the various aspects of the Ontario Heritage Act. As you know better than I, there are several other

programs in Ontario that are models for this. There is the Ontario heritage bridge program, which is a co-operative program between the Ministry of Transportation and the Ministry of Culture and Communications, and the Ontario heritage buildings program, between the Ministry of Government Services and the Ministry of Culture and Communications.

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So that for there just to be an exemption, a single exemption, in the new Cemeteries Act that is going to somehow kind of accommodate the new Ontario Heritage Act, in our view is not going to do it. It is going to leave all of us who are working in the heritage field and attempting to use cemeteries as a source of information in great confusion. It is going to lead to a lot of problems.

In addition, in my brief I have pointed out that section 9, section 13, section 44, section 48 and sections 64, 66, 72 and 59 are all sections that cause us grave concern. Again, I do not want to run over time, but I think it is not a simple matter that there is just one section we want you to address. We want the thread of this problem and this challenge, because it is all of our history in Ontario that we are concerned about here, to run through those sections as well.

Mr D. R. Cooke: Thank you. Is there any supplement to that from the archaeologist?

Mrs Caroppo: I think I would just point out that in your package you have a brief from the Canadian Association of Professional Heritage Consultants. Part of that association contains archaeologists who are primarily consulting archaeologists in Ontario; that is, they make their living doing archaeology. The rest of archaeologists in Ontario either make their livings in an indirect way in the sense that they are educators, or are avocationalists: they do something else for a living but have an abiding interest in the history of Ontario through archaeology.

I would draw your attention to page 4 of their brief, wherein they have a long list of clauses and sections which they feel are in need of clarification, proper definition or just sorting out in consideration of heritage interests.

I would also stress section 87, as Dorothy was suggesting. It is not clear to me how a portion of one act can supersede another whole act. What exactly was Mr Sorbara talking about on Monday when he talked about designations? Was he not clear; did he not give you amendments? I have certainly not seen them in writing and until we can, I honestly do not know how the two are going to mesh properly.

We are very concerned that a statement of intent, a statement of interest, on behalf of the Ministry of Consumer and Commercial Relations as the lead agency in this bill, that cemeteries and unmarked burials are of heritage value to this province, period, must be stated. Otherwise, how can the regulations have any effect? In our opinion they would be groundless. Why bother to have a regulation about heritage concerns if there is no statement that they are of value?

Certainly we need clear definitions of what is a burial; presently it is something like a human body or cremated human body. As Dorothy was suggesting, what about one particular bone? I believe—I can be corrected—that the native

community feels that one bone does in fact constitute a burial or that two individual bones 50 metres apart constitute a cemetery. Mechanically that is going to be extremely onerous for the archaeological community to handle, given the current draft regulations about a tripartite disposition agreement and stopping work until such a team can be put together and so on and so on.

Many of these are difficulties we think can be ironed out in regulations, but notwithstanding that, there are certain parts of this act which we feel must be amended to more clearly represent our interests and the interests of the people of Ontario with respect to heritage.

The Chairman: I think we had better move on, because some of us have commitments over the lunch hour that we made earlier. There were a couple of other final questions, if you would allow that, Mr Cooke.

Mr D. R. Cooke: Yes.

Mr Farnan: The heritage concerns are legitimate. I think that is very clear. You did an excellent job in presenting those concerns. I believe Mrs Stoner is correct that the idea that the particular act will be scrapped, will not fly. But when there are legitimate concerns, I think one could seriously look at delay or postponement in order that one can address issues of major concern.

I think if we are to be serious about the cultural community in our province, and that cultural community is under a great deal of pressure at the moment in the area of, let us say, Bill 119 where they feel their funding, for example, is under some degree of question, it is important that the government as a whole reinforce its commitment to this area of heritage.

I think my colleague, Miss Martel, is correct. It would be very helpful if you were to do some wordsmithing among your groups to come up with something very rapidly. I do not get a sense at this stage that the motions that will be coming through on behalf of the government will be addressing this in any detail, and when I say the government I mean the ministry. Therefore, it will certainly help the committee. It may help members on this committee, members of the government who have a commitment to heritage, and I heard Mrs Stoner say she had a commitment, and I look forward to those amendments that will reflect the views of the heritage community.

But whatever you can do to help us in our work over the next week, it would have to be done fairly fast. I would think we might ask the government for some additional time, perhaps, to expand the process so that we can, if we are going to do the job, do it properly and give heritage the position it deserves within the legislation.

The Chairman: We will be dealing with Bill 30 first. That is our intention at this point anyway so there are at least a couple of days there perhaps.

Mr Dietsch: Actually, Mr Chairman, that is the point that I wanted to make. It is the fact that we had indicated in our earlier discussions that we would be dealing with Bill 30 first. We would be integrating Bill 31 where those areas overlap each other so that we are not repeating ourselves on a continuing basis which, in fact, allows a little bit more time for consideration of the viewpoint that was made.

I guess I am a little bit confused by some of the comments in terms that

I want to get it perfectly clear. From an archaeology point of view, are you suggesting that there should be amendments in this act that would allow you to do archaeology work in the cemeteries? Did I understand that, or did I misunderstand you?

Mrs. Caroppo: At the present time archaeology excavations are conducted across the province in both a prehistoric aspect, a native-community-type aspect, and in the historical sphere, that is after contact. In both cases, burials or portions of persons who have been buried, not complete persons in every case, are uncovered with amazing regularity in the sense that hardly an excavation goes by where a portion of a person is not recovered.

We are concerned that we continue to be allowed to uncover and analyse these resources on behalf of the people of Ontario. We do not covet the bones. It is the information we are after. But I am afraid I do not quite understand your question.

Mr. Dietsch: You did very well with an answer for not understanding the question. First of all, what I understand you are talking about is a find somewhere in the field that is not a marked area. I was a bit concerned about some of your answers in terms of a marked cemetery. I thought I understood you to say that you wanted the authority to do historical and archaeological digs in those areas. That is what I want to be clear on.

Mrs. Caroppo: All right. I would suggest that no one in his right mind would wish to willy-nilly excavate a marked cemetery for the sake of doing it. We tend to do those things only when the cemetery is under threat. Just recently in the city of Belleville an excavation of a historic period cemetery directly attached to the church was conducted by archaeologists of this province. They entered into negotiations with the church. The church wanted to get rid of the cemetery and put up a community hall. They were convinced that, although there were a few stones here and there, most of the markers had originally been organic and had decomposed or whatever, but in fact the final sum of burials was 600.

I am saying that we do derive information even from historic period burials, but it is not our aim to go and do them just for the sake of doing them. We generally do that period only when they are threatened. In this case, they would have been bulldozed and dumped somewhere in a huge pit with no—

Mr. Dietsch: Because I think that quite frankly makes a difference as to the moulding of legislation that covers those areas and I think can be handled.

Mrs. Caroppo: I am sure it does.

Mr. D. R. Cooke: I have a motion, Mr. Chairman.

The Chairman: I want to thank the delegation. Did you want to say something to them? That is the end of the discussion with the delegation.

Mr. D. R. Cooke: Unless there is someone here from the Ministry of Culture and Communications, I would like to ask the chair if you would send a Hansard of this session to the minister as quickly as possible.

The Chairman: I think that is appropriate. I was going to say it later, but in these hearings all week group after group has expressed

appreciation to the ministry for the consultation and the very positive way the consultation went on over the last year or two. This is the first group I can recall that has not been happy with the consultative process so we will make sure that this Hansard gets to the minister. Hansard is not instant, as you know, with committees, but someone from the minister's staff is here in the room so I am sure he will relay that message to the minister.

Miss Martel: Just continuing from that, because I do not think any of us, with the inclusion of the people who are presenting, are experts in terms of what Culture and Communications might say to us, could we also request that if we are moving amendments to this effect, we have someone here from C and C in case we have problems in wording, and not only from Consumer and Commercial Relations but also from Culture and Communications?

The Chairman: Oh, I see what you are saying. That request can be made.

Thank you very much for your presentation. As you can see, it has made us all stop and think about the process.

Miss Martel: It is food for thought over lunch.

Mrs Caroppo: It is a very complex issue.

The Chairman: We are adjourned until two.

The committee recessed at 1233.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

THURSDAY 28 SEPTEMBER 1989

Afternoon Sitting



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Tappenden, Eric C., Director, Business Regulation Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 28 September 1989

The committee resumed at 1407 in room 151.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order as we continue our examination of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

Before we get on with our first presentation, there were some proposed amendments handed out to the committee just before the lunch break. Those, the ministry has informed us, are not an exhaustive supply of amendments. They are mainly housekeeping or technical in nature. The ministry wanted to wait until next week when all the presentations have been made before it made more substantial amendments. That is what that package is on the two bills.

The first presentation of the afternoon is from from the International Council on Monuments and Sites. Mr Blades is here. If you would introduce your colleague, we could proceed.

ICOMOS CANADA

Mr Blades: My name is Keith Blades and my colleague here is Jill Taylor. We both represent Icomos Canada. You will find more information inside our submission on Icomos Canada, rather than my spending time going into that now.

Before I get into our presentation proper, I would like to add that the presentation made just before lunch by the Ontario Historical Society is very relevant to our submission. For those who missed that, our written documentation should possibly be considered together with it, to have a comprehensive view of heritage concerns.

Our primary concern is with where this proposed act has an impact on Ontario's existing cemeteries. We feel it does so in a number of ways, specifically, the intent for this act to prevail over the Ontario Heritage Act. We do understand that some revisions have been announced, so only part of that act may be affected, but we do await confirmation and specific details of that.

We are also concerned about the numerous places where the proposed legislation appears to ignore the cultural significance and value of existing cemeteries and markers, and particularly where regulations are proposed that address the safety, stabilization and repair of existing markers in operating, disused and abandoned cemeteries.

I would like to show some slides that illustrate something of the existing situation. I am going to take you through and tell you where each of these cemeteries is.

This is the old pioneer cemetery in Perth, Ontario, typical of many of Ontario's cemeteries, with some 300 markers, 50 per cent of which require some form of repair. It is a significant site. The marker for the last duel in Ontario is here. There are a number of both provincial and federal members of Parliament buried here. But it is a disused cemetery.

Here in Toledo are some very early markers. Most of them are fieldstone markers, many without any inscription at all. This is an abandoned cemetery in the middle of a field.

This is Chepstow, near Walkerton. There is some very beautiful ironwork. They are markers that were put up by early settlers from Alsace-Lorraine.

What I think these first slides illustrate is that there is a very varied and important cultural resource existing in our cemeteries across the province.

Among some of the other issues is vandalism. Again, this is at Perth. Here the marker in the foreground has been pushed over and the ironwork from the John Haggart memorial has been smashed. Actually, someone has cleared it up a little. They have piled it on top of the ground.

Vandalism is a major problem and one of the things we feel is that in the present act it has taken away the legislation from the province and has put it with the owners in terms of prosecution. The existing act certainly has very small fines and we would like to see those fines increased, because elsewhere it has been found that stiffer penalties certainly play an impact in terms of vandalism.

This is an all too common sight or an increasingly common sight, what we call corraling of marker stones, where they have been picked up and placed in a concrete pad, totally now out of context with the original locations. You will note they are facing in all directions. There are also stones laid down.

Again, up towards Wiarton, on Highway 10 there is a similar sort of situation where the stones have been arranged in ascending order in terms of their height, like rows of soldiers, again set in very dense materials. You can already see deterioration occurring in the base of some of the stones as a result of the soft marble being set into these very dense, unforgiving concrete bases.

This is Middleville, near Lanark, the pioneer cemetery. Again, the markers have been lifted and put into a dense brick wall. Some of the cracking you are seeing there is a result of that action, and not so much the condition they were in before. This is very common, either mounted collectively into one wall or into a series of concrete cairns.

There are interested groups out there that are very keen to do restoration. One of the problems is that the restoration is often misdirected. Here, again at Perth, you can see a marker that has been set in a new concrete base, repaired with quite dense, strong Portland cement mortars and then set into a concrete housing, all of which has shortened the life of this marker considerably. If it had been sensitively repaired, it could have lasted

indefinitely. This has probably put a life of 30 or 40 years on this marker before it will be totally destroyed.

I refer to this as "Fanny." Perth is one of the cemeteries I have been involved with in the past. Here, what was simply recommended was to use a noncaustic paint stripper carried in a poultice to remove the graffiti that were on the stone. What has actually occurred is that the stone has been cleaned with a disc, something like two millimetres of the soft marble surface has been removed, the lettering has been painted in and the marker has been bolted through in order to mount it in the steel channel. As you can see, the mounting has partially obliterated part of the lettering. Some of the value of that material has now been lost.

One of the recommendations within the new legislation is to lay down unstable stones. This is perhaps one of the more damaging techniques. Once a stone is laid flat in the earth, ground moisture very quickly moves up into that material, and through salt crystalization the surface deteriorates. Also now, because it is laying face up, it is very susceptible to the etching action of acid rain and those inscriptions will very quickly become erased. In this position, the other thing we find is that with grass maintenance equipment, these stones very easily become damaged.

I have saved until last one of the most disturbing instances of vandalism that we might consider, carried out by a municipality. This cemetery was bulldozed after the coroner's report on the death of a young child in Oxford county, when the recommendations from that report were circulated to municipalities. In this particular instance, this municipality was very concerned about the stability of its markers and simply bulldozed them. You can see the resulting damage that has occurred.

That brings me to the end of my slides.

In our submission, we have itemized the various clauses where we are concerned. I do not think I have time to go through these in detail now, clause by clause, because I think after this morning's presentation and the slides I have shown you, you begin to recognize that with some 5,000 existing cemeteries in Ontario, most of them unprotected by any heritage legislation, the present situation is already pretty desperate. But I sincerely hope that you also recognize that the introduction of this legislation as drafted will be disastrous, and as we have already seen, will destroy many of the cemeteries as we now know them. I am sure that was never the intention of this act.

How can we help in redressing the situation? In our summary, we have asked to be involved and have an opportunity to comment on the revisions to the act as they relate to the Ontario Heritage Act. We are also very keen and willing to assist in preparing the guidelines that are mentioned in the act, and in fact assist in addressing the various clauses that have an impact on existing cemeteries and markers.

I talked about work that I have done. I have done cemetery reports. This one goes way back to 1985. Other colleagues, whom I am in competition with, lent me some of their reports to show that there are a group of professionals out there who are very concerned and are carrying out work right now to existing cemeteries. There has recently been a publication produced by someone in private practice, an architectural conservator. He has put together a

100-page publication that he is circulating and trying to sell, which deals with the specifics of conservation to stone markers in cemeteries.

There is legislation, certainly in the United States, and we understand right now in Nova Scotia there is an act going through the House there which deals specifically with many of the issues we are addressing here. We have been unable to get copies of that legislation because it is before the House. Certainly, in other parts of Canada and other parts of the United States, particularly the northeastern United States, there is some precedent at least.

There are lots of associations that put out booklets and recommendations for treatment. I have brought just three along here, or there are even more. There are other suggestions from manuals of conservation from Nova Scotia, for example.

I think across the country there is a very real concern and we would like to ensure that concern continues here in Ontario.

Ms Taylor: We also feel, as was spoken to this morning by the Ontario Historical Society, that there has to be something in the act that will reflect the fact that burial sites are of great heritage value to the province. It is important to see that in the body of the act. As Keith was mentioning, there are many professionals who are very concerned about the issue of conservation of historic monuments who would be ready to help out in the formulation of the regulations pursuant to the act, which will aim to properly restore and maintain these sites.

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Mr Blade: That is everything we would like to say. If you have any questions, we would be pleased to answer them.

The Chairman: Could either you or Ms Taylor tell us whether you had any consultation or discussions with the Ontario Historical Society on these two bills?

Ms Taylor: We did not speak to them before their presentation, but I attended the presentation this morning and it was very relevant to the topics we were discussing.

The Chairman: I thought it was fitting that you would follow them.

Ms Taylor: The practical and the theoretical aspects, yes.

The Chairman: What about the ministry over the last couple of years? Did you have discussions with them?

Mr Blades: Which ministry?

The Chairman: Either the Ministry of Culture and Communications or—

Mr Blades: There are ongoing discussions with them.

The Chairman: On these bills.

Mr Blades: They are very active because certain cemeteries do get designated under the Ontario Heritage Act. I have been involved with certain cemeteries that have been designated, but I also know that they are very keen

to work towards guidelines themselves. I am sure consultation with them is going to be essential. Some of our Icomos members are in fact from that ministry, so they are aware of our interest as well.

Miss Martel: But that was strictly the Ministry of Culture and Communications, not the Ministry of Consumer and Commercial Relations.

Mr Blades: That is right.

Miss Martel: Thank you for your very interesting brief. It was a little bit different from what we have heard to date, although the information that preceded your brief added a new perspective to this whole thing as well.

I want to concentrate on the coroner's inquest and perhaps you can answer me on two things, on some of the recommendations that came out of that inquest and whether you think that as a result of that inquest, some of the legislation we are seeing here and some of the hysteria, to use a better word, that has come from that is causing the problems we are seeing, in particular, in terms of the burial ground that was bulldozed by the municipality as a consequence.

Mr Blades: Yes. I think the reaction and the recommendations that came out were very natural. I think that is the result of situations like that. No one wants to say otherwise. What we would like to say is that the stabilization issue is a very difficult one to address.

The point I would like to make is that many simple markers stood in good condition for 100 years. There are not many buildings that stand for 100 years without any sort of maintenance. I think what has happened in many case, is that some of these things have moved, some of them have deteriorated, but without any form of maintenance there has been a problem.

I believe we can do a lot in terms of simple repairs, simple straightening of markers, very sort of low-tech, inexpensive solutions to put them back into stable condition again. This was a specific problem with a table-tomb, I understand, in Oxford county, but many of the suggestions in the new act relate to ordinary markers where they are perhaps already tilted or in danger of collapse. I think simple straightening of many of these things, using very simple techniques, is possible.

In here, we have actually included one sheet from that report that was done on Perth, which addresses stabilization using sort of a low-tech solution of simply a wood cradle to support broken markers rather more than using big chunks of steel or mounting these things in concrete, which I think is inappropriate in terms of the heritage value of these materials. Does that—

Miss Martel: A little bit. I suppose what I was wondering is whether, in our concern for public safety, we have gone a little bit overboard by looking at the recommendations of the coroner. We will all agree it was an event that was very tragic, but maybe we have gone a little bit too far and forgotten that there may be a simpler way we can facilitate everyone having public safety but keeping our heritage intact as well.

Let me just ask one other thing, because we are in a position to try to make amendments next week. Ideally, how would you see your professionals responding—I am not looking so much at regulations and putting some standards in place but in a very practical sense—if we were in the position that a number of tombstones had fallen in a grave and we figured that there was some

historical heritage value to them. Practically, what can you do for us, in terms of legislators and for the public good at large, to ensure that we are not doing more damage than anything else?

Ms Taylor: I think maybe one of the things we have been talking about has to do with who you contact when something like that happens. If there is, first of all, a recognition of the heritage importance of the site and if there was some kind of a representative of the heritage community who could signal to other people that there was a problem here, they could alert other heritage professionals who could offer solutions to the problems.

I think the key is communication once something like this happens so that you do not get a single person in the municipality taking action that might supersede other courses of action.

Mr Blades: At our last national assembly, which was last November in Ottawa, our general title was Sacred Heritage and our committee met specifically to address stones. We had conservators and professionals from right across the country and the primary issue was the stabilization of stones that were damaged or tilting or falling over. We had conservators from Quebec, from Charlottetown, people from right across the country. I think all of us here feel that is the major issue.

We undertook to develop guidelines. We did not know this was coming up in the meantime. Hopefully, there are enough interested people out there who are committed to putting together guidelines and I think we have enough experience to help you in that regard. Jill's point of view is, yes, alert somebody in the heritage field who is sensitive to the issues and we may very well be able to help in specific situations with somebody who is nearby.

Mr Kanter: I agree with the previous speaker that you have brought a new dimension to this issue. As a substitute member on this committee, I was interested in a number of your comments. I just want of focus on some of your comments on vandalism and antivandalism provisions.

You suggest in your brief that the form of the existing act is preferable because it makes vandalism an offence; I presume a quasi-criminal offence. A person is liable to the province rather than the owner.

Is there a fine level set in the existing act? I am not familiar with that at all.

Mr Blades: Yes. If I can read it, "Every person who contravenes any of the provisions of subsection 1 is guilty of an offence and on conviction is liable to a fine of not less than \$4 and not more than \$40." That is hardly what I call preventive.

Mr Kanter: The current legislation may be somewhat lacking as well as the proposal.

Mr Blades: Indeed.

Mr Kanter: I appreciate that because one does hear, from time to time, about problems of vandalism.

My next question relates to the proposed action, which I take it would be a civil action rather than a criminal action, as I understand it. I have

just been discussing this with my colleague, Mr Cooke, and I think he is closer to the practice of law than I am. I have two questions.

Is your concern who launches the action? Is your concern about the amount that can be obtained—that is, just limited to the amount required to restore the cemetery to the state it was in before anything was damaged—or is it both? Do you think the state should launch a prosecution and the amount should be greater or would you be satisfied if it is the owner who launches the prosecution but you think there should be some punitive amount in addition to the restoration of the damage?

Mr Blades: I think the former would be preferable.

Mr Kanter: Can you explain what that means? Can you explain your answer?

Mr Blades: I am even further away from law than your colleague. I think part of the problem under the new act is that you get a variety of owners. There are municipalities, cemetery operators, and I think that is part of the problem. If they are liable to the province, I think that carries more weight. If we saw some cases taken to task and substantial fines imposed, I think that may well have an effect right across the province rather more than individual owners bringing prosecutions.

Mr Kanter: What would you suggest? Obviously, \$4 to \$40 is probably quite anachronistic and historic. What would you suggest as an appropriate fine for an offence of this nature?

Mr Blades: That is a very difficult question, if you have not considered it beforehand.

1430

Mr Kanter: I had not considered this entire issue beforehand, but you did, I think quite effectively, bring it to our attention.

I did not intend to put you on the hook other than to highlight the area you were concerned about. I take it you think it should remain a criminal or quasi-criminal offence and the amount of the fine should be increased substantially above \$4. Is that a fair statement?

Mr Blades: That is a fair statement.

Mr Kanter: My colleague has pointed out that there a number of quasi-criminal offences. If an individual who is convicted of an offence, things like furnishing false, misleading or incomplete information, they are liable to fines of not more than \$20,000. Obviously, there are some very substantial offence provisions in the act. I guess the question for the committee to consider is whether there should be some tightening or toughening of the penalty for vandalism. That is the issue I really wanted to put before the committee.

The Chairman: I was looking at some of your concerns with the specific clauses. I am confused by the numbers. Were you working with an early draft or am I confused? They do not fit with the sections of the bill.

Mr Blades: It may well be an early draft. I have my copy here.

The Chairman: That is probably what it is. Just so members are aware of that, if you are going through the specific comments, the numbers are out of sync.

Thank you very much for your presentation.

I believe the ISIA Association of Toronto is not present. They were scheduled for 2:30. I do see the friendly face of Mr Loughheed in the audience. If he would be prepared to come up now, I would appreciate that.

We welcome you to the committee and look forward to your remarks. We do have a copy of your brief distributed to the committee.

LOUGHEED'S LTD

Mr Loughheed: In trying to utilize and maximize my few minutes before you, I have basically submitted my written proposal to you and I would like to highlight certain areas of it in these few minutes we gather together.

In doing that, I recall the remarks by John Donne when he once wrote, "...any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee."

In your personal lives, when that funeral bell tolls, you will expect a funeral director who is professional, empathetic, ethical and accountable. Basically, the constituents that you represent beyond your own personal lives, if in bereavement situations, will have similar expectations of professional, empathetic, ethical and accountable funeral directors.

Historically, our province has been the benchmark of such funeral service excellence not only for Canada but for North America. Our legislative and educational programs have been the model for other developing jurisdictions in the United States and Canada.

I would bring to your attention the preamble of my brief. In 1986 there were approximately 65,000 deaths in Ontario, with the Board of Funeral Services receiving only 17 complaints, representing a 0.025 per cent complaint ratio. Ontario has been well served by the 526 funeral homes that employ over 2,000 licensed funeral directors.

Politically, this legislation is perhaps the most encompassing document that you will review in your political careers. Other issues and lobby groups may capture headlines in home towns, may manage to get placards waving down the street, but I will guarantee you that you will never review legislation which governs an inevitable part of the human journey such as this.

Death visits cottages and castles, nursing homes and nurseries and it is incumbent upon you to author a very fair, accountable and professional document that herein is known as the Funeral Directors and Establishments Act.

You might wonder why I speak. It is not because I have northern connections on the committee, but perhaps that got me on the agenda. I come today to suggest to you that I am a licensed funeral director from northern Ontario and a past chairman of the Board of Funeral Services, a board I sat on for six years and chaired for three. I am a past chairman of the discipline and licensing committee for the board, a past chairman of the ad hoc legislative committee for the board, past-president of the Northeastern Ontario Funeral Directors' Association, past chairman of the Order of the

Golden Rule of North America for Ontario, founding chairman of the Bereavement Foundation of Sudbury and founding chairman of the regional palliative care task force for Sudbury. I am currently the chairman of the Laurentian cancer care campaign, which is establishing a comprehensive oncology program for northeastern Ontario.

Having stroked my ego so well and impressed you with all those past things—

Mr Dietsch: And you are only 104.

Mr Loughheed: I am old and decrepit.

The fact of the matter is that I want to point out to you that I do not come today to sit before you with personal commercial interests to protect and I do not come before you to be an adversary to previous presenters. I come before you today because I am proud to be a funeral director. I am the last guy to let you down. I tolerate the Digger O'Dell stories. I tolerate being an undertaker because I believe I do help people. I think today you have an opportunity to help me help people with this document in front of you.

In the early 1980s, I was one of the initiators of this review process. When Mr Timbrell, then Minister of Health, inspired by the American eagle of deregulation, commenced an unfocused and unnecessary crisis of deregulation within this province, I eventually appeared before the standing committee on procedural affairs, which supported the need of regulation. In fact, your predecessors, and perhaps some of you here today sat on that committee, thought there should be more regulation within the bereavement sector. I have met with politicians and bureaucrats in the persons of Messrs Grossman, Norton, Elston, Elgie and their respective staffs.

Today you review a long overdue and necessary document. I commend this proposal because it retains effective clauses and regulations and introduces necessary amendments. In particular, I would ask you as a committee to maintain support for the changes regarding prearrangement trust funds, the establishment of a compensation fund and the prohibition regarding direct solicitation of funeral and cemetery needs.

However, this document is flawed. It could be flawed by oversight, lobbying efforts of well-organized minority groups or, God forbid, by the unrealistic hope that future regulation will address the areas that should be enshrined by this document. That is why I journeyed down from Sudbury and have past positions on all these wonderful things—because we spent seven years to get it to this point in time. If you ladies and gentlemen allow these loopholes and some of these loose ends to be kept in this document, we will spend another decade trying to get them out again. You have the power today to address the following eight issues that I would like to share with you.

First, advertising: The bill contains what are basically generic advertising prohibitions. If something eventually offends you as lawmakers, your community or your citizenry, the Board of Funeral Services will have some sort of regulation and clause to fall back on. I suggest this should be amended and there should be a continuance of the ban on unlicensed people and advertisements in Ontario.

Five years ago there was a consensus among the memorial societies of Ontario, the Board of Funeral Services and the Ontario Funeral Service Association that directly involved unlicensed people appearing in ads. What it

really meant was that Wayne Gretzky in Brantford could not say that he prearranged his grandmother's funeral. If you were enthralled with Wayne Gretzky and Beckett and Graves Funeral Home in Brantford paid him enough money, you would race out and prearrange your grandmother's funeral because that was where big 99 prearranged his.

We decided that funeral directors should stand on their own. You might think the Wayne Gretzky illustration kind of odd, but those of you from the St Catharines area will know there is a funeral home in St Catharines that used the Art Linkletter voice from the United States—he had such a trustworthy voice and such a wonderful image—to encourage seniors to come in and prearrange their funerals. This is not necessary in Ontario and it should be banned.

I would hope the omission is obvious, but the act right now allows price advertising in Ontario. I am very concerned that this generic wording with regard to regulation at the end of the act kind of says, "If it's offensive to Mike Farnan that he hears there is a \$990 funeral special, he can put a complaint in and immediately have some sort of legislative review to amend the regulations." We need price advertising in Ontario. That will deal with the issue of excessive costs and it will deal with people having to go to the marketplace and telling people what they charge.

1440

One of the most glaring omissions in this document—and if the people who authored the document are in the room, I really cannot believe that they would allow this to get to this level—is in the area of transfer of ownership. If anybody in his right mind tells you good folks that we are going to do this in regulation, just fall off your chair laughing. It does not require the transfer of ownership to notify the prepaid clients. That is nonsense.

The people of Ontario should know with whom they are doing business. There is no way that a large conglomerate should be able to buy a local funeral home, change the management and the ownership and not be responsible to the people who have invested in those trust funds. It should be enshrined in this act that upon a change of ownership and management, the prepaid clients would be advised of the new owners in writing. That is only fair and it certainly is a workable situation. When I was chairman in 1983, we adopted this as a board policy, which in fact is adhered to to this day, but it would be nice to have it enshrined in this act.

A Toronto example is the one in which the manager of the funeral home, when he found out who had bought the funeral home, brought in his prearranged contracts to the Board of Funeral Services, quit the job the same day and said he wanted a letter sent to all his clients because he believed the new owner was a crook and he would not work for him and certainly would not want his friends to do business with him.

In another situation outside of Toronto in a place called Iroquois Falls, which some of us from northern Ontario will know, the buyer and the seller got into a feud halfway into the bargaining and the deal and they decided they were going to send letters to tell who the new owner was. It eventually ended up in court and was just nonsense. People should know with whom they are doing business.

The third issue I would like to raise for your consideration this afternoon is place of worship. I believe you were trying to reflect the changing cultural mosaic of Ontario. I think this is an expedient answer and will cause more problems by leaving this loophole in. I have read this loophole about place of worship several times, and I really do not understand how it fits into the document. I really do not understand how you as lawmakers can accept that you have to license people and establishments, train people at funeral service schools and yet you will leave a clause that says we can have a funeral from the place of worship.

I interpret this as something that was a spinoff from the Supreme Court of 1981 when Eric Gowan was allowed to operate a direct cremation service in Thunder Bay because he was not providing a funeral under the Webster's Dictionary definition which that judge used to define a funeral, which meant a rite, ceremony or procession. I suggest to you today that if a rite, ceremony or procession is part of a funeral, the individual should be licensed.

I have also checked with my successors on the Board of Funeral Services since I chaired the licensing committee and I have been assured that the funeral service education program at Humber College allows for the exemptions and that people who do not believe, for religious or other reasons, in embalming or orientation towards traditional funerals are granted exemptions. There is no reason why a person could not attend the funeral service education program and be exempt from issues he does not believe in.

I suggest to you that if a funeral is a rite or ceremony in connection with the death of a person where the body is present, how can this section, place of worship, be allowed under this act? It is inconsistent with the need to supervise a lawful and proper funeral. It does not address the issue of a dead body as a pathological host on public roads and neighbourhood environments. Who in fact has custody of such a body outside the place of worship? Who is responsible to file and secure the appropriate documentation? If the focus were to allow memorial services at the place of worship without licence involvement, simply the addition of the phrase "if the body is not present" would clarify this issue.

My fourth point that I would like to share with you is that I believe this act is abdicating its responsibility to address the issue of "excessive." When I stood before the standing committee a few years ago, your predecessors were almost obsessed with the word "excessive." They wanted to know about the high cost of dying in Ontario. They wanted to know what the Board of Funeral Services was doing about that, the professions and the consumers.

In the act in front of you, this wonderful thing called a price list is being bandied about as the cure-all for excessive pricing. I totally disagree that price lists will address this issue. It is a failed American idea and you should not be swept up with the idea that a price list is going to answer excessive pricing in this province.

It was propagated by bureaucrats such as Paul Gardiner in the Ministry of Health in the mid-1980s, who felt we could solve all our problems if we had price lists. My question to you is, how many price lists does a funeral home publish? Do we have a price list for northerners? Do we have a price list for Torontonians? Do we have a price list for Polish people and francophones? Do you have a price list for blue-collar people and white-collar people? Where is the control of the price lists?

If it is a generic price list, and I am simply listing what funerals

might cost, what if Mr Haggerty wants to change the funeral he wants, and does that have extra expenses to it? The price list is not enforceable, because I could date the price list and say: "But that was last month's price list. The printer hasn't brought me this month's price list, so you are stuck with another \$200 on your bill." The price lists are not the answer to the excessive issue. I believe that all merchandise and services should be signed for, as now required under the existing act: "The signature of the person or persons who in each case has authorized the provision of such funeral services and supplies."

I believe a written price quotation for specific funeral services and merchandise should be provided upon request at need or prior to need. I believe—this is the one you should wrestle with next week in your deliberations—that the Board of Funeral Services should be given a mandate under the act to annually acquire information regarding pricing so ranges would be established for the profession, the public and the complaints process. As medicare seems to have almost bankrupted our health care system in this province, I am not suggesting morticare, but I would suggest to you today that we need to have a little better handle on what is being charged out there.

I suggest to you right now that in any of your communities, whether that would be in northern Ontario or St Catharines or Mississauga, that you, as community leaders, really do not have the foggiest idea what a funeral should cost in your own communities, you do not have the foggiest idea about that. Your current information will likely be the last relative you buried, that you said, "Well, Dave, when my Dad died we paid \$3,000, so that's about what it should be." Maybe Dave paid too much money for his father's funeral. You do not know that.

The fact of the matter is, the Board of Funeral Services could be empowered that annually ranges be established, not to lodge charges; but if a charge was lodged, the funeral director could then justify why he is \$1,000 more than the range for that particular funeral. What it basically would do is have him tell you he bought too pricey a piece of land, the city taxes are just burdensome in his community, he paid his father-in-law twice what the business is worth. He may have a very justified reason why he is charging what he is, but he would be accountable in the idea that there is some benchmark of what is fair.

The fifth point I would like to raise with you is the interment rights under section 31. I do not want to offend our people from Mississauga or Toronto, but I could not believe how this smacked of the big city implication of putting ink to paper. We who live with the Eskimos and the dog sleds—I could not believe they would prohibit interment rights from being part of a prearranged contract. The fact of the matter is, as Floyd and Shelley know in our community, the major cemetery, which is Parklawn Cemetery, will not sell plots ahead of time if you want a double plot.

If you are a retiring couple, if you are a person headed to a nursing home, if your son lives in Vancouver and wants to prearrange the funeral, under this legislation you cannot go to the funeral director and say: "Here's \$600 for the plot. We think it is a ridiculous bylaw at Parklawn Cemetery, but when Dad dies, would you make sure that plot is purchased?" Further to that, in investigation and preparation for today's presentation, I found out that parochial cemeteries across the province often have such limitations too, that they will not sell to a parishioner until one of the parishioners has died, allowing for a spouse to buy the second plot. I do not believe that this particular clause is sensitive to people beyond very large cemeteries in very

large communities. I think this particular interment right prohibition should be removed.

The sixth point I would like to raise with you today is cemetery--funeral home combinations, section 39. You good folks are likely bored to death to hear about this thing, but I would suggest to you today that it is necessary that I raise to you, as a former chairman of the Board of Funeral Services and somebody involved with the discipline and also the litigation with the board, that this act is not tough enough as it now stands.

There is a Restland Funeral Home in Dallas, Texas. It is a wonderful place. When you go in their gates they can sell you a cemetery plot, they can sell you a columbarium niche, they can cremate you, they can sell you a casket, they can sell you complete funeral services, they can sell you flowers, they can sell you monuments. They are a wonderful corporation. They have great large billboards across the city of Dallas that say, "Restland Funeral Home: One Call Does All." I suggest to you today that we do not need billboards on the Queen Elizabeth Way saying, "One Call Does All," that in fact we have to have a prohibition that we have independent representation for the consumer.

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Granted that this act does prohibit onsite, granted that this act does have operational relationships prohibited, this act does not prevent financial relationships with holding companies. When I was chairman of the board, we were told by our solicitors, Barry Swadron and Graham Scott in two separate opinions, that we had to wait and see if the cemetery and funeral home combinations would be a problem. We waited. We never saw an onsite location in this province in the last few years. We never saw operational referrals.

What we did see, as a board, was aggressive pre-need sales tactics, which is one of the catalysts for us sitting in this room right now, because there were nursing home people harassed in Ottawa and there was a nonsensical approach to the consumer of this province. That was one of the greatest issues that expedited this entire process. What we did see was a significant increase in funeral costs where there was a cemetery involvement. Big companies are not incorporated charities and management is not always accessible to the little guy, the consumer.

The seventh point I would like to raise, and perhaps I am the most expert witness who can raise this point for you, is the Board of Funeral Services composition, subsection 4(1). The majority of the Board of Funeral Services should be funeral directors. You might sit back and say: "That is great, Lougheed. You're a funeral director. It's easy to be self-serving and say you should control your own destiny." I suggest that if you read the act very closely, it indicates it only has to have four meetings a year. If you were lucky enough to go through the political patronage—which, God knows, never happens—to get appointed to the board, you will suffer many times to have to appeal to your friends, God knows where, in certain offices to get reappointed. Let's say you were lucky enough to get reappointed to six years. That means you may have attended 24 meetings in six years. I do not believe that gives you the enlightenment or the expertise to be a funeral director.

Lay representation on the Board of Funeral Services historically has been able to bring the consumer's perspective into the discussions. They are not there for technical knowledge. They are not there to become funeral directors. I think I was very fortunate when I was chairman of the Board of

Funeral Services that my three representatives were Dr Agnew Johnston, the former moderator of the Presbyterian Church in Canada; Ken Bagnell, the editor in chief of the Imperial Oil Review; and Edith MacIntosh, the former mayor of Kitchener. I can honestly tell you that those three people would often sit back with our decisions and say: "Why are the funeral directors on this board so tough? Why do they come down on such difficult decisions?"

Maybe it is because our profession gets the black eye when the alcoholic in southwestern Ontario goes and clips out the OPP decals off the litter basket containers, puts them on his black car, goes down lover's lane, knocks on windows, throws a flashlight in the window and says: "What's going on in here?" Some young couple whose hormones are totally out of control are very in a frenzy and not sure what is happening. He says: "Well, Mr Haggerty, give me the liquor and we won't report this to your parents."

Mr Haggerty: Do not get me involved.

Mr Lougheed: The man managed to pick up a lot of liquor over those weekend rendezvous. I suggest to you that when he came before our discipline committee we said we would suspend his licence for professional misconduct. Dr. Johnston—God bless Agnew; he was a great friend—said, "Don't you think it would be fairer if we sent him to a detox centre and let him keep his licence?" These were the issues where a humanitarian may say, "Yes, that makes sense," but the hard reality is that that man had a funeral director's licence, just like me, and should not be allowed in the practice of funeral services.

I suggest to you that lay representation is important. I was one of the people who lobbied Mr Grossman and Mr Ball to allow the memorial society people to have representation regularly on the board, and I have no problem saying that that was a good thing. I just do not think that the majority should be nontrained, nonenlightened, nonprofessional.

The last point I would like to share with you this afternoon is a point called crematoriums. It is subsection 56(1) of the proposed Cemeteries Act. What really bothers me about this is that it is a continuance of the cemetery sector to control crematoriums. I believe this is absurd. A monopoly they assumed in legislation in the 1960s you are going to allow to continue today.

I note that in a daily Toronto newspaper, a certain cemetery corporation offers direct cremation services. I believe the gentleman actually appeared ahead of me. I might suggest to you that he has an "alternate service," he calls it, and that he has a cemetery corporation that will have direct cremation, but he will also have a chapel for you and he will also help you fill out the documentation. That kind of smacks of a funeral, as far as I am concerned, but then again, I am just a simple undertaker from the north.

I suggest to you this afternoon, though, that if they can conduct funerals on that basis, we as funeral directors should be able to offer crematoriums. I am quite capable of purchasing the bricks, mortar, retorts and gas propane to be able to operate a crematorium. I suggest to you good people today that in fact the cemeteries are sacred properties, as we saw by a previous illustration of the slides, and I do suggest to you cemeteries enjoy a special tax status. But crematoriums, no. That is brick and mortar and gas propane.

If crematoriums can offer alternative funerals, I think the funeral directors in this province should be allowed to offer cremations. Those of you

who do not live in Toronto, Ottawa or London but who live in the rural areas know you do not have crematoriums in your area right now because it is not worth while for the cemetery operator to build such a thing. Yet if the funeral director was allowed to open as a crematorium, you may get that service in your area. Furthermore, will it not reduce the costs of travel expenses of going to the crematoriums? I humbly suggest to you that removing that monopoly would certainly help the consumers of Ontario.

In summary, I applaud the efforts of this document and ask you to consider carefully the clauses and the concepts I have raised. I opened with John Donne. I will close with a guy named George Linnaeus Banks. Banks wrote four lines, entitled What I Live For:

"For the cause that lacks assistance,
 "For the wrong that needs resistance,
 "For the future in the distance,
 "And the good that I can do."

The cause of bereavement always lacks assistance, because we live in a death denial society. The wrongs of this document can be remedied by you. The future of Ontario funeral service is in your hands. The good that you can do is to guarantee that every person in this province will have a funeral for their family member that is conducted in a professional, ethical, empathetic and accountable fashion. Thank you.

The Chairman: Thank you for a stimulating presentation. I have one question for you. You talk about the representation on the Board of Funeral Services. How many lay people would you have on a board?

Mr Loughheed: Depending on what your document decides for numbers, right now it is eight people. Five are licensed; three are nonlicensed. Why they came up with the number eight, I really do not think they know, but it is something that was kind of involved with history in the Board of Funeral Services.

The Ministry of Health never embraced us. In fact, I would have likely come today and pleaded with you to stay in the Ministry of Health, but because I am involved with an oncology centre, I know what a mess the Ministry of Health is right now, and I do not want to stay there. I will accept Consumer and Commercial Relations. They may have better numbers.

Miss Martel: I should tell members of the committee that I had Gerry on my cable show last week and it was as entertaining. I hope the constituents enjoy it. We talked about all these kinds of things.

Mrs Stoner: The whole province has seen him now.

Miss Martel: Let me go back to number three on my list. I do not know if my numbers are wrong or not, Gerry, but it is the place of worship. Yesterday we had representatives from Steeles College Memorial Chapel, and we went through their situation, which is that a lot of things, according to Jewish tradition, do not require flowers, embalming, etc. What I got out of it was that they want some type of special exemption, and I think the bottom line was that people who worked for them did not have to be funeral directors. I think you are telling us a bit of a different story in terms of that there are exemptions from some of these classes which would allow them still to—

Mr Loughheed: Definitely.

Miss Martel: Can you just expand on that?

Mr Loughheed: Sure. One of the principals in the Jewish community operated a funeral home. His name was Eli Ben Guri. Anybody who was involved with the Board of Funeral Services knew the name well, because he was constantly being charged for operating a funeral home without a license. He would hire semiretired or fully retired licensed funeral directors who in fact never went to work. He just paid them a retainer so he could keep that particular licence.

I presided at a discipline hearing in which a gentleman was charged with professional misconduct for not conducting the funeral home. The man did not know the names of any of the staff. So I am not really telling stories out of school. This was a very great concern.

The Board of Funeral Services at that time said to Mr Ben Guri: "We are more than happy to let you go to Humber College. We will exempt you from whatever courses you have, but you must have a certain standard of funeral practice. If that is a certain standard of Jewish funeral practice, that is fine, but you have to register a death and get a medical, and work with the coroner's office and you have to be able to conduct yourself in such a fashion."

My question to this is if somebody says: "Oh, I am taking my brother-in-law to the place of worship. We are going to have a service for him, but once we get the dead body there I am just not sure what we're going to do with it after that," there is a question in the mind: Where is your responsibility to maintain that standard that the rest of the community expects? I am certainly not saying that they should have to have intravascular embalming courses or orientation into funeral services they are not accustomed to or need, but I do believe they should have some sort of training.

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Miss Martel: And now it can be guaranteed, at this point in time?

Mr Loughheed: Historically it has been guaranteed.

The Chairman: Any other questions or comments of Mr Loughheed?

Mrs Stoner: It was a very stimulating discussion and presentation. You made your points exceptionally well.

The Chairman: Thank you, Gerry, very much.

The presentation that was scheduled for 2:30 is here: ISIA Association of Toronto. There are two gentlemen—Mr Tahir, is that the correct pronunciation? If you would take your places at the table and please make yourselves comfortable. We are very informal. You can proceed whenever you are ready. You are Mr Tahir?

Mr Tahir: Yes, exactly.

The Chairman: Welcome to the committee.

ISIA ASSOCIATION OF TORONTO

Mr Tahir: Thank you very much for giving us the opportunity. I will

start in the name of the Lord Allah, the most beneficent and the merciful, and we pray that the blessings of Allah will fall upon you.

First, would you like to have the introduction of my organization, or can I just go into the bill itself?

The Chairman: Whatever you like. We are having a little problem. Can you speak a little louder and into the mike, if you can, because we are having trouble picking you up.

Mr Tahir: Do you want first to get the introduction of our organization—

The Chairman: Sure.

Mr Tahir: —or can I go straight to the bill?

The Chairman: Whatever you like.

Mr Tahir: The brief introduction of the organization is given on the first page. In the question period if any honourable member of this committee wants to ask any question, he or she is welcome. So I will go on to page 2.

As my personal introduction, I am Syed Ali Tahir and lead the congregation and I am a member of this association and am right now representing our liaison.

This is the first opportunity that we have been given a chance to present.

First and foremost there is no doubt that Ontario has become a great multicultural province in North America. Several ethnic groups interact and synthesize to make this province adoring and blooming. Hence, we appreciate and welcome your idea to give us our share in serving and building our Ontario. Sharing of responsibility makes a task meticulous, fast and fruitful.

Bill 30 is a good step to update the Funeral Services Act and the Prearranged Funeral Services Act. The position of the registrar, the Board of Funeral Services and the tribunal and so on seems to be a fair procedure, but there should be representation from all groups of worship.

So my first request is that there should be representations from all groups of worship.

My second one is that as per our religion, one cannot give or accept any remuneration for the funeral services. It should be considered in the Funeral Directors and Establishments Act.

Third, provisions for choosing not to perform embalming are highly appreciated.

Fourth, we have been performing all the requirements of funeral services except paperwork for 15 years or more, and our licence will be limited to our community and non-commercial services. Therefore, if the governments wants us to know anything more to obtain a funeral director's licence, we would appreciate getting the knowledge directly from the government.

In Bill 31 we are not sure about protection of a cemetery because this

bill says "public interest" in order to close a cemetery. This term "public interest" is a very wide term. People in power can fabricate public interest in positive or negative situations.

Therefore, if any existing cemetery is not looked after properly it should be transferred to another body to take care of that.

These are my major concerns and our message to this body so that they can consider our points on this.

The Chairman: Thank you Mr Tahir. Could I ask you a question about point number 3 on the second page. You say that "one cannot give or accept any remuneration." Does that mean when someone has a funeral there is no cost to the family?

Mr Tahir: One Muslim is supposed to take care of his dress. Usually what happens is that they buy it before they die. When they are living, they buy the dress which they will put on later on. But the washing of the body or taking it from the home or the place of death to the cemetery and burying it is not remunerative, no. It should be all provided free as a community service because one is not only the part of the community, but it is service for himself who is alive at that time.

It means that they have to think that when they die this will happen, and this service is a purely community service in our religion. And they are not supposed to accept any money, or those who want to even give, they are not supposed to give it.

The Chairman: It is interesting. Any other questions or comments of Mr Tahir? If not, thank you very much. You are very specific in what you are requesting and it is very clear to members of the committee, so thank you very much.

Mr Tahir: Thank you.

The Chairman: The next presentation is from the Jami Mosque Burial Committee. Mr Dhooma? Is that correct? Please have a seat and make yourself comfortable. If you would introduce the gentleman with you.

Mr Patel: My name is Adam Patel.

Mr Dhooma: My name is Hoosen Dhooma.

ISLAMIC CENTRE OF TORONTO

Mr Dhooma: I start in the name of Allah, the beneficial, the merciful. My name is Hoosen Dhooma and I represent the Islamic Centre of Toronto. My colleague is Adam Patel.

Mr Chairman and members of the committee, this is to provide you with the reasons for our request for a nonprofit, nonembalming licensed funeral home for Muslims in the Toronto area.

As Muslims, members of the worldwide faith of Islam, funeral rites for our dead are strictly prescribed and embalming is prohibited. Important points, however, are highlighted below for your information.

1. The remains of a deceased Muslim have to be buried as soon as possible, preferably on the day of death.

2. The remains have to be purified before burial by washing with water in the prescribed manner. This rite has to be performed by members of the community, ie, friends and relatives, since Islam encourages community participation in all aspects of the funeral rites of a deceased member of the community. This enhances community feelings and creates a greater understanding and appreciation of death as a natural and inevitable consequence of life.

1510

3. The remains of a deceased male have to be purified and prepared for burial by a male Muslim and those of a female by female Muslims.

4. After a body has been prepared for burial, congregational funeral prayers have to be performed. Before a Muslim performs any ritual prayer, he has to wash himself in a prescribed manner in a symbolic gesture of purification and the prayer has to be performed in a clean place on prayer mats after one's shoes have been removed. A mosque is ideally suited for this because the required facilities are available.

A Muslim burial cannot and should not be ostentatious. The remains must be wrapped in a plain white cotton sheet and placed in a simple wooden box or coffin, as you may call it, regardless of the social or other status of the deceased, thus symbolizing the equality of man before God. For these and other reasons, it is imperative that Muslims have the required facilities to bury our dead in the religious manner prescribed and as a sacrament in which the Muslim community participates as a whole. Thanks to the grace of the Almighty, we are in a position to facilitate Islamic burials.

According to Islam, no business is involved in the whole burial procedure; hence no buying or selling is involved. We therefore seek your co-operation in helping us attain our sacred goal.

I may mention that it is an obligated duty on every Muslim that when a member of the Muslim community dies—for that matter, as soon as he hears of a death in the community—then first he says a Koranic verse which means, "To God we belong and unto Him is our return."

The very next question he will ask is, "When is the funeral?" because it is an obligatory duty of every Muslim to see to it that when a member of the community dies that funeral is taken care of, so much so that if that funeral is not taken care of then the whole Muslim community is answerable and held responsible before God. As long as friends or members of the family, or at least somebody has taken care of it, then it is a relief to know that when he is told the funeral is tomorrow or the day the after, then immediately he gets the impression it is something that has been taken care of.

When we talk of no buying or selling being involved, of course buying and selling is involved in the sense that the material that is used for the shroud is something that has to be purchased and gas has to be filled into the vehicle that is going to take the body from the hospital to the cemetery, to the mosque or wherever it is. What is really meant here is, as the previous speaker mentioned, that no remuneration is asked for or, even if offered, accepted. Because here a duty is being performed and it has to be done. That is what is meant by no buying or selling is involved.

Since embalming is out of the question, it just does not come into the picture here at all.

I may add that not only the remuneration is not expected and received, but if a family does not have sufficient funds, then even the deficit, or at times the cost of the entire funeral, is borne by the community itself.

As a supporting document, I also include a letter from the Board of Funeral Services, dated 15 June 1981. At that time, although we were offering the service to the community even before that, we approached the Board of Funeral Services and got its blessings to carry on with the work that we were doing. We answered a lot of questions that they asked us, finally they gave us the go-ahead, as is stated in this letter, through which we were carrying on since then or even before that.

Another supporting document that I have is from the Department of Public Health from which the inspector comes for a routine check whenever he feels like it, which is round about once a year. You will notice from the latest report that it is a favourable one.

What we really ask for now is that, in essence and in principle—literally we are doing everything—all we need now is for you to say, "Okay, now you are licensed." That is all I have to say, Mr Chairman and members.

The Chairman: Thank you, Mr Dhooma. Help me to understand this a little better. If someone in your community dies, does he or she go almost immediately to a mosque?

Mr Dhooma: Yes, sir. Their first stop is at the mosque.

The Chairman: Right, the first stop is at the mosque. That is a good way of putting it because we are not at the last stop yet.

Mr Dhooma: Not yet, no. The last stop is at the cemetery.

The Chairman: Okay, and you have your own cemetery.

Mr Dhooma: No. By "own cemetery," I mean we have graves at York Cemetery, which is at Yonge and Sheppard.

The Chairman: Oh, I see. So the deceased goes to the mosque where the ceremony is held.

Mr Dhooma: No. I hope this is not boring.

The Chairman: No.

Mr Dhooma: When there is a funeral in any family, the first thing they do is phone the mosque to get hold of somebody out there who calls me at work. Then we say okay. Now that we have got certain funeral homes through which we are working—they are familiar with what we do—we refer them with a note to say, "If there is anything else that we can do to help this family, you are welcome to ask us."

Oftentimes they say, "Mr Dhooma, they have not got the money to pay for the grave." I say, "Okay, go ahead." Sometimes they may come and say: "There is a funeral. The family member who passed away is in Barrie and they haven't even got money to pay for the transport." There is no pulling back. There is no turning back. I, of course, have to consult the local funeral committee itself to get the okay from it over the phone.

The Chairman: Is it the local funeral parlour or establishment that moves the deceased to the mosque?

Mr Dhooma: No. When the family of the deceased comes to the mosque, they either see the secretary who is at the mosque or me. I am the director of the funeral services.

Mr Patel: To answer your question, yes. We are using the services of the funeral home.

Mr Dhooma: Yes, we are now, mainly because we do not have a—

Mr Patel: Basically, we regard them as couriers.

Mr Dhooma: Yes.

Mr Patel: We see them as couriers just bringing the remains from the hospital to the mosque and then from the mosque to the cemetery.

The Chairman: Totally removed from your ceremonies.

Mr Patel: That is all, and collecting the cheques, of course: a nice, big cheque.

The Chairman: Right. Thank you.

Mr Tatham: You asked my question and he answered it. Thank you very much.

The Chairman: Now, you do understand that this committee is not a licensing committee.

Interjection: Yes.

The Chairman: That is not our role, just so you clearly understand that. Because of the wording in your brief, I wanted to make sure that was clear.

1520

Miss Martel: May I just check something? You or the ministry staff may be able to answer. Do you have an exemption now that allows you to do this?

Mr Dhooma: By exemption, I mean we have been doing it now for as many years as I can remember, over 10 years. We have the washing room there, where the body is prepared. The services are offered upstairs and the hearse or the vehicle we hire from the funeral home. It brings the body there. We do everything and they take the body from there and take it to the cemetery. We have the letter from the funeral board.

The Chairman: Are you asking that the mosques be declared licensed funeral homes?

Mr Dhooma: Exactly.

The Chairman: That is what you would like?

Mr Dhooma: That is what I mean.

The Chairman: I understand.

Mr Haggerty: Eric, have you got something to say to that?

Mr Tappenden: Only if you want clarification.

Mr Haggerty: Yes, clarification. That is what we should get.

The Chairman: What would you like, Mr Haggerty?

Mr Haggerty: Just some clarifications on the questions raised.

The Chairman: I think we are clear on it, unless there is something specific. It is a question of whether or not a mosque could be declared a licensed funeral home. Is that really what you are—

Mr Haggerty: No, the question was raised that they want a continual licence, I guess. I do not have the answer for that, but I thought perhaps—

The Chairman: Can you help us on that? Can a mosque be a licensed funeral establishment?

Mr Tappenden: First, in relation to what Miss Martel raised, my understanding is that there is not currently an exemption granted by the board under the Funeral Services Act, but that because the mosque uses the services of a licensed funeral establishment for certain services, it has agreed by letter that the mosque may carry out those other functions. At present, it would only be possible for a mosque to hold a funeral services licence if in fact it met all of the criteria under the Funeral Services Act, with the required preparation rooms for embalming and all those other things.

Under the proposed act, there is regulation-making power to set out those premises requirements in some detail, and obviously there would be different requirements for funeral establishment which did embalming than for those which did not do embalming. The board would have to consider whether or not the mosque would meet the premises requirements for a nonembalming funeral home.

The Chairman: Are there any other questions and comments from members? If not, gentlemen, thank you very much for your presentation.

The Chairman: Just before we adjourn, I think I speak on behalf of members of the committee if I express my appreciation to Mr Tappenden and Mr Webber for their assistance this week. It has been most helpful and we appreciate that.

Miss Martel: If I might a point, please, it concerns the two briefs in particular that we have heard today in respect of the International Council on Monuments and Sites and, before that, the Ontario Historical Society. Let me just put it into this context: I do not think any of us had a sense that they were coming and that there were these kinds of concerns that had not been met. I do not think they have been met under the particular bill, so we did advise the group of people who were here that we would like to see their amendments and try to deal with them next week.

The problem I have, in thinking about it a little bit further, is this: We have yet to hear from the Ministry of Culture and Communications and might never have heard from it were it not for the presentations that came up today

concerning the Ontario Heritage Act, how it impacts upon these particular pieces of legislation and what their perspective is on some of the issues that were raised, such as the preservation of stones, the best way that can be achieved, etc.

I would prefer myself, because I do not know much about it if anything at all, to actually have them come before us and deal with some of the issues that were raised here today. Why I am talking about this right now is because I assume that that will throw us out of the schedule of finishing with these two bills next week, if in fact we do that, because we have a lot of work with the two bills. If we set some time aside to have just that particular ministry come before us and try to talk a little bit about the act and what it is doing, that might take up some time.

I would like to have them before us myself because I do not think I know enough about it to make an informed decision and I am not really sure I want to rely on the Ministry of Consumer and Commercial Relations staff—not that that is a slight—but I would like to get the perspective of the officials in the other ministry because they may not be in agreement as to what should be done. I want to make sure we have a different perspective not coming directly from the Ministry of Consumer and Commercial Relations.

I throw that out because I do not know what kind of time frame we are on as a committee to get this done. I know this has been years in the making; I do not think we are going to have a lot of opposition. We all agree that the bill is good; there have to be some changes. We are not going to have a big fight about it not passing, but I would think that as a committee, we might like to give more time than just next week, in particular to Bill 31 and some of the concerns that were raised by those two groups.

The Chairman: Before I hear from Mr Dietsch, if the debate goes beyond the two speakers, we will need a motion to deal with it, but we will hear from Mr Dietsch first.

Mr Dietsch: I just want to address some of the concerns that have been put forward in recognition of some of the concerns that all of us heard from the heritage people this morning. I think first of all we should realize, and I am sure we all do, that the intent of these two bills is really with respect to a larger consumer protection area. My understanding is that the Ministry of Culture and Communications is currently going through a redraft of its mandate in terms of addressing some of the long-range concerns with respect to heritage, etc.

I had a conversation with ministry staff and suggested to them that Mr Tappenden should, in fact, follow up with the people from the Ontario Historical Society to get their concerns expressed to us as quickly as possible. My understanding is that it is in the process right now. That is going to take place in preparation for Monday.

In answer to your question, I do not have a great deal of difficulty if we want to ask the Ministry of Culture and Communications to come before us. We have Monday morning; we are not sitting until 2 pm. I do not know if that can be done or if we can move our meeting schedule up from 2 to 1 or get some feedback in. I see it as two distinct pieces of legislation, albeit I think they are valid concerns. I am certainly open to some amendments in those heritage areas.

The Chairman: May I make a suggestion? Without supposing or assuming

any time restrictions in the two bills next week, I think that is jumping ahead of ourselves. We would rather that we invite Culture and Communications for the first hour on Monday, from 2 to 3. I hesitate to try to change the schedule at this point for members who are not here.

Would members of the committee agree to invite Culture and Communications to come between 2 and 3 and put a time restriction on that, so then we can move into the clause-by-clause of Bill 30?

Mr Dietsch: I think that is a fair approach and will cover many of the concerns that were raised.

The Chairman: Let's do that and we can ask some of the appropriate persons. Mr Tappenden perhaps knows who those people are, and we can get them before the committee on Monday afternoon. I remind members that we are not in this room next week. We will probably get a lot of letters of protest from the television audience out there, but we are in room 230 next Monday afternoon.

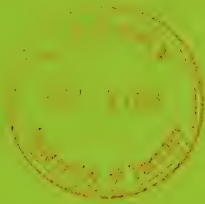
Mr D. R. Cooke: Tell them to write to their whips.

The committee adjourned at 1528.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

TUESDAY 3 OCTOBER 1989

Morning Sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Haggerty, Ray (Niagara South L) Mr McGuigan

LeBourdais, Linda (Etobicoke West L) for Mr Lipsett

Lupusella, Tony (Dovercourt L) for Mr Brown

Runciman, Robert W. (Leeds-Grenville PC) for Mrs Marland

Clerk: Mellor, Lynn

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Tappenden, Eric, Director, Business Regulation Branch, Business Practices
Division

Sorbara, Hon Gregory S., Minister of Consumer and Commercial Relations
(York Centre L)

Wise, Beverley, Legal Counsel

Cooper, Jerry M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 3 October 1989

The committee met at 1010 in room 230.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order as we pursue truth and justice via Bill 30 and Bill 31. Yesterday afternoon, we had completed section 14 of Bill 30. We are ready to move on to section 15. I have no amendments before me on section 15. Are there any comments or amendments on section 15?

Section 15:

Miss Martel: I have a question on section 15. It goes back to transfer services. We were told yesterday that they are going to be licensed. I am wondering how we are going to deal with allegations of misconduct concerning transfer services. If they are going to be dealt with under this section, should we then be changing "funeral director" to "licensee"?

Mr Tappenden: The intent of the sections dealing with discipline is that those would apply to members of the profession; that is, licensed funeral directors. There are other provisions in the statute dealing with the board's ability to take action either against a licensed funeral establishment, as the company, or against a transfer service where necessary, but I do not believe that the provisions of the discipline committee are related to individuals operating transfer services unless those individuals are licensed funeral directors.

Miss Martel: In terms of discipline of people operating transfer services, you said it would be the board that would undertake that action as a whole.

Mr Tappenden: The board has an ability to take action with respect to the conduct of a company, which is either the establishment or the transfer service, or with respect to individual, professional, licensed funeral directors. If, in the case of a transfer service, it is managed and directed by a licensed funeral director, then the provisions of the discipline committee may be invoked. If in fact it is run by someone who is a nonprofessional, then the board would be restricted to those other sections of the act dealing with the actions it can take against a company.

Section 15 agreed to.

Section 16:

The Chairman: Section 16 is to be amended by adding something to it.

Mr Wildman: Rewriting it, basically.

The Chairman: All right.

Hon Mr Sorbara: Subsections 1, 2 and 3 stand, but there is an insertion, which will become apparent in the amendment, an expansion after subsection 3.

The Chairman: Mr Dietsch moves that section 16 of the bill be amended by adding thereto the following subsections:

"(3a) If the discipline committee is required to hear and determine allegations of incompetence under clause (3)(b), the discipline committee may require the funeral director who is the subject of the hearing to submit to a physical or mental examination, or both, by such persons as the board designates.

"(3b) If a funeral director fails to submit to an examination required under this section, the discipline committee may order that the licence of the funeral director be suspended until the funeral director submits to the examination.

"(3c) A legally qualified medical practitioner who conducts a physical or mental examination required under this section is not compellable to produce at the hearing his or her case histories, notes or any other records that may constitute medical evidence.

"(3d) A person who conducts an examination under this section shall upon completing the examination forthwith prepare and deliver to the registrar a report that contains facts, findings and conclusions and suggested treatment, if any.

"(3e) A report that is prepared as a result of an examination that is conducted under this section shall be delivered by the registrar to the funeral director,

"(a) if the examination is required prior to the hearing, at least five days prior to the commencement of the hearing; or

"(b) if the examination is required during the course of the hearing, at least five days prior to its introduction as evidence.

"(3f) A report that is prepared as a result of an examination that is conducted under this section is receivable as evidence without proof of its making or the signature of the person making the report.

"(3g) A party to the hearing who is not tendering a report as evidence has the right to summon and cross-examine the person who made the report on the contents of the report."

Mr Dietsch: This fits in after clause 3(b), at the bottom of what is 3(b) now. It is to fit in as section 3a under that area. It is basically to create a process for incompetence.

The Chairman: Just a minor point: On subsection 3(c), and members have the amendment in front of them, add the word "examination" between---

Mr Dietsch: Yes, between "mental" and "required." I read it into the text.

Mr Wildman: Since this is so detailed, and I appreciate the reason for that, perhaps we could have some description of how this is similar to the changes that were suggested by the Board of Funeral Services in the presentation it made to the committee. They talked about the need to add an extensive process for determining what was mental incompetence.

Mr Tappenden: The Board of Funeral Services met with us and expressed the need for this kind of section, and it expressed that same need before the committee last week. This is really a response to that request, that the process for the board's concerning itself with mental and physical examinations be further outlined in the bill itself, so this is consistent with the proposal put forward by the board.

Miss Martel: I have no problem with that particular section. I have a question within section 16 on some other matter. Do you want to deal with this one first?

The Chairman: All right. Let's try to move this amendment first and deal with it. Any other questions on the proposed amendment?

Motion agreed to.

Miss Martel: My question concerns the hearings that will be held under this particular section. I am referring back to the submission we had from the Board of Funeral Services concerning hearings and whether they should be open or not.

The Chairman: I am missing something. Which section are you talking about?

Miss Martel: It is under section 16, under the process of hearings itself.

They agreed that there should be open hearings, but that in some cases it may be necessary for the discipline committee to have that closed. They listed particular reasons, one of them being that if a person were also involved in criminal investigations, that might cause a problem if it was an open public hearing before the discipline committee. I am wondering if we want to include some kind of mechanism to allow for a closure of the hearings in those kinds of cases.

1020

Mr Tappenden: Yes. I cannot put my finger on it in terms of the section, but I am sure our legal counsel can help me. Essentially, the section now is a change from what exists in the current Funeral Services Act. The current Funeral Services Act says that all disciplinary hearings are to be held in camera. What we are doing under this proposed statute is to say that unless the discipline committee, using the Statutory Powers Procedure Act's procedures, makes the hearing in camera, then it is to be considered open.

Normally, they would be open unless the committee had reason to believe there would be a need to invoke an in camera session because of the financial nature, for example, of things being discussed or personal matters or criminal

matters and things like that. Perhaps our legal counsel can advise where that clause is in the proposed bill.

Ms Wise: It is really covered in the Statutory Powers Procedure Act, section 9, which is the statute that governs the procedures of these kinds of hearings. Mr Tappenden has basically covered the substance of the criteria that the court would apply, or that the tribunal, rather, would apply in having the hearing closed to the public.

That section says:

"9(1) A hearing shall be open to the public except where the tribunal is of the opinion that,

"(a) matters involving public security may be disclosed; or

"(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing concerning any such matters in camera."

Miss Martel: I just wanted to be sure there was a section where they could use that. Thank you.

Ms Wise: Yes. There is protection to have the hearing held in private.

The Chairman: Any other comments or questions?

Mr Tatham: It is up to the tribunal to make sure it should be open or closed, not up to the individual who is on trial.

Hon Mr Sorbara: First of all, as a matter of policy, one will note that in revising statutes of this sort, whether they come within the jurisdiction of health discipline committees or discipline committees of the board of funeral directors, there is a trend in the development of public policy to move from closed hearings to open hearings. As a practical matter, where someone who stands before a discipline committee feels the hearing should be closed, counsel for that individual generally will argue the case for a closed hearing based on the legislative context set out in the Statutory Powers Procedure Act.

By and large, the issue will be decided by the discipline committee within the context of the arguments pro and con. You see the balance in the statute saying that where the private interest is greater than the public interest, a determination can be made.

The Chairman: Mr Haggerty moves that paragraph 4 of subsection 16(4) of the bill be amended by striking out "and direct that the fact of the reprimand be recorded on the applicable register," in the second, third and fourth lines.

Mr Dietsch: The reason given is that the current bill would have recording of a reprimand on the register only if directed by the discipline

committee. This amendment coupled with subsection 16(4a) has automatic recording of a reprimand unless the discipline committee orders otherwise.

Motion agreed to.

1020

The Chairman: Mr Dietsch moves that section 16 of the bill be amended by adding thereto the following subsection:

"4(a) If the discipline committee imposes a fine or reprimands a funeral director, the discipline committee may direct that the fine or the reprimand not be entered in the applicable register."

Mr Dietsch: This is the follow-up to the earlier one.

Mr Wildman: I have a question. I would just say I do not quite understand the purpose here. It seems to me that in the previous amendment which you have just carried--

Mr Dietsch: That is right.

Mr Wildman: --we have it automatic.

Mr Dietsch: No.

Mr Wildman: You have made that automatic report. If it is going to be automatically recorded that the individual has been reprimanded, why then would you not make it also automatic that if that reprimand has resulted in a fine it will be recorded?

Mr Dietsch: I think it is the other way around. It was automatic under the previous submission and we amended that submission so that there was latitude of it being recorded or not being recorded by the discipline committee.

Mr Wildman: Basically, I am asking why.

Hon Mr Sorbara: This is an easy one, so I am going to try explain it as simply as I can. The way the section stands in the bill as debated on second reading, there is a provision under paragraph 16(4)4 that where a discipline committee finds a funeral director guilty of professional misconduct, as the clause reads, the discipline committee may "reprimand the funeral director and direct that the fact of the reprimand be recorded on the applicable register." That says in effect that if you reprimand, you will direct that it be recorded.

Instead of that provision, we are creating a permissive provision. As amended, paragraph 4 will just read "reprimand the funeral director," and subsection 4a will be permissive and allow the discipline committee to make a determination as to whether or not a reprimand or fine be entered in the applicable register.

Mr Wildman: I understand that. My question is why, though? If you are making it automatic in one case, why is it permissive in the other case?

Hon Mr Sorbara: It is permissive in both cases.

Mr Wildman: Oh, okay. then I have missed something.

Interjections.

Mr Dietsch: It was automatic before we removed the previous paragraph. That is what I said. Now it is permissive under both alternatives.

Mr Wiseman: If the person were found guilty, why would you not want it recorded automatically? If the registrar were to change or the board members changed and you had the same person come back maybe five years down the road with another similar problem, you would have nothing recorded that he or she had been charged for this previously. I know they do not change the board members that often sometimes, but they could.

I would think that if you are not found guilty, of course it should not be on the record, but if you are found guilty, similar to any other—if you go to court and you are found guilty, certain things stay on the record for a long time. If you are charged here, I think it should stay, automatically.

Hon Mr Sorbara: I think you raise a very good point and I am going to ask Mr Tappenden to give a little bit of the background as to why we are proposing that in lieu of an automatic and mandatory recording, the section become permissive and allow the discipline committee to direct that it not be entered. I want to make the point first, though, that the section, as amended, would have a recording in the absence of a specific direction from the discipline committee that it not be recorded. Perhaps Eric can just discuss some of the reasons behind altering that approach.

Mr Tappenden: Essentially, the two provisions are tied together. The most recent amendment that has been moved as subsection 4(a) indicates that the discipline committee imposes a fine or a reprimand, the committee "may direct that the fine or reprimand not be entered on the applicable register." It will be normal practice for both fines and reprimands that the matters be recorded in the register with the previous amendment. This is simply the flip side of that amendment, which says that the discipline committee has the power to change that automatic recording if it sees fit. It says that instead of the onus being on the committee to justify recording it on the record, it will now be automatically recorded, but the committee will have the authority to not record it if it feels it should not be, for some reason, in the public interest.

1030

Mr Wiseman: Just as a layperson, could you give me an example of when it may not be advised to record it? If you are guilty, I think you should be recorded automatically. You should not have that option. What case would there be; is there a scenario where perhaps you should not record it?

Mr Tappenden: I am certainly not an expert in these matters, but I would imagine it would be in the same kinds of cases where a discipline hearing would be held in camera. If there were something particularly personal that were the cause for holding the hearing and the cause for the fine or the reprimand, it could be that to put it on the record would simply cause the question to be asked of why this person was fined or reprimanded. It may lead to a need to divulge that.

Mr Dietsch: I would think it would have something to do with the implications of mental and physical incompetence too, that you may not always

want to have those types of allegations included within the record automatically. I think that those things would be discretionary by the discipline committee in some cases; you are quite right.

Mr Wiseman: Regarding what Mr Dietsch has said, who would see those records, whatever goes on the complaint that is written, besides the board? It would just be the registrar who sees that, would it not? The other board members could not go in except the ones who heard it?

Hon Mr Sorbara: Those documents are open to the public and can be seen by anyone, as they should be. The purpose of recording a reprimand or a fine is to give notice to the public that a discipline hearing has taken place, a judgement has been made and a reprimand or a fine has been imposed.

As a matter of policy, one would expect that the vast majority of fines and reprimands would be recorded and therefore available to the public. The reason the permissive aspects of subsection 4a have been incorporated is that the Board of Funeral Services has suggested to the ministry that there may be certain limited circumstances in which the nature of the hearing, the nature of the allegation and the fine or the reprimand imposed is of such a nature that it is inappropriate to put it on the public record.

Although those circumstances, when we think about them, are few and far between, one can imagine a matter of such a personal nature that so uniquely respects particular circumstances that a discipline committee would believe both that a reprimand ought to be imposed but that the person reprimanded or fined should not have to carry the burden of that reprimand or fine as a matter of public record. In the criminal justice system, for example, we have mechanisms to grant pardons which, as a matter of statute law, eliminate or make the criminal record disappear. In the absence of that, a criminal record remains with you for life.

Mr Wiseman: I was thinking that if it was for mental incompetence, then I could see it, if that were defined that that is where they would not put it on the record. Somebody's health might improve. If they were mentally incompetent at a certain time, maybe they would get well and people should not have a chance to look at that, as they do with your doctor's records.

Mr Tatham: I have the same feeling that I certainly want to give a person an opportunity. The first time, okay, but if a second occurrence comes along, how do you know? What happens if this same individual does something of a similar nature? Where are the bells to start ringing; maybe not exactly a red light up there but an orange light to say, "Hey, this fellow has had some problems previously"?

Hon Mr Sorbara: Just to make the point that the matter of the fine imposed or the reprimand given does not vanish from the record of the board or the record of the funeral director. It becomes part of history just like a criminal offence. Even if a pardon is granted, it still exists as a valid criminal conviction; but the question is whether or not that fine or reprimand ought to be part of the public record in addition to the private record.

Mr Tatham: I see. So there is a record kept.

Hon Mr Sorbara: Absolutely. There is a record kept. The question is whether or not it is public, and this allows under unique circumstances—

Mr Tatham: Does the board, say, five years down the road, have access to the fact that this individual had had problems earlier on?

Hon Mr Sorbara: The answer is yes.

Mr Dietsch: The resolution outlines many of the reasons why the board should have the discretionary power. It is quite in-depth, everyone recognizes that, and it spells out a number of criteria. That is, I think, why you want to have some flexibility and that is why I remind the member of the copy of that resolution we just passed.

The Chairman: Ms Wyse, did you wish to help us out here?

Ms Wyse: Just to clarify and stress that under section 2 of the bill, the register is the public document as opposed to the general records that are kept by the registrar, so the registrar of the board would surely have on file the history of any reprimands, fines or disciplinary proceedings.

Mr Wildman: Your explanation seems very reasonable to me. I just have one question, though. If, hypothetically, there were a situation where an individual had been reprimanded or fined for a problem which the board felt was one that should be kept private rather than made part of the public domain; if at some time down the road that individual, for a second time, experienced the same problem and was then reprimanded a second time or fined a second time for the same thing, surely it becomes a situation where it should automatically be public at that point. It is then what could indeed become an ongoing problem. I do not see why the privacy of the individual should be protected.

I will not bring them before us on the record, but I am thinking of other situations that are very topical and in the news right now across the country, which, if they had been made public a number of years ago, perhaps would have been better for society as a whole.

Hon Mr Sorbara: I think you make a very good point. The statutory framework, as set out here, would allow both the fact of the previous reprimand to be part of some further discipline hearing, and certainly a determination made that in the event of a discipline committee deciding to reprimand or impose a fine noting that along with reasons, that would be part of a public hearing, in any event.

I note that in discipline hearings under the Law Society of Upper Canada, reprimands and fines are now made part of the public record by way of publishing in a document that is part of the Ontario Reports, and there is generally a summary of the case noting the historical reasons why an individual was reprimanded or fined or indeed disbarred. So the answer is yes. That previous incident, unrecorded as a matter of public record, can under appropriate circumstances then become part of the public record.

The Chairman: I have a feeling the committee is ready for the question on Mr Dietsch's amendment.

Motion agreed to.

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The Chairman: There is one more amendment on section 16.

Mr Haggerty moves that subsection 16(6) of the bill be struck out and the following substituted therefor:

"(6) If the discipline committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately despite the fact that an appeal is taken from the decision, unless the tribunal otherwise orders and, where the tribunal is satisfied that it is appropriate in the circumstances, the tribunal may so order."

Mr Haggerty: The reason given for that is that the provision refers to "court" in lines 4, 5 and 6, and we are dealing with a tribunal appeal.

Mr Wiseman: I just wonder how that works with other disciplines. Is this in keeping with, say, the law society, which you used as an example a while ago? Do they disbar a person before he has a chance to appeal any decision, or is their decision final? Here, you can appeal it, but the discipline action is already taken. In most cases, you can keep on until the appeal is heard, as I understand it.

Hon Mr Sorbara: Each professional body has its own statutory and regulatory system for determining the right of appeal, the avenue for appeal and the rights of the individual and the governing body under appeal. That is why we have a specific statutory framework here in this act, because one cannot rely on a body of general law or common law to make the determination. My understanding is that this section, providing for stay on appeal for incompetence, is very much like the current trend in other statutory frameworks. I cannot remember the specifics that govern the Law Society of Upper Canada, but this would not be terribly different. In fact, what it does is allow for circumstances where an individual can continue to practise while the matter is under appeal and circumstances where he or she cannot.

Mr Wiseman: But here he could not continue on, could he?

Mr Tappenden: In effect, this is really a replacement for the procedure under the current act whereby if someone is disciplined by the discipline committee under the current Funeral Services Act, he may appeal to the Funeral Services Review Board. Under this statute, the review board is being replaced by the Commercial Registration Appeal Tribunal. This gives the individual who has been disciplined the right to apply to the tribunal for a stay of the discipline committee decision. So if someone feels that the discipline committee decision was unfair, is appealing and feels he should be allowed to continue to practise in the interim, then he may apply to the tribunal for a stay of that lower discipline committee hearing, and the tribunal says, "Yes, you may continue to practise," or "No, you may not, while your appeal is pending." That is normal practice by the tribunal, I know, with our other regulated industries and it is also the case with most of the health discipline boards.

Mr Wiseman: If a person was disciplined in this way and his lawyer wrote a letter and got the appeal started, then automatically, as soon as the letter is received by the board hearing the appeal, he could carry on his business until such time as it made a decision.

Hon Mr Sorbara: No, it is actually just the opposite. The way it would work in practice is this. This committee makes an order to revoke, suspend or restrict a licence on the grounds of incompetence. The funeral director decides that that discipline committee came to the wrong decision and appeals to the Commercial Registration Appeal Tribunal. This provides an opportunity for the person disciplined to go before the tribunal as an initial matter and say, "You're going to be hearing my appeal, and I am seeking an order from you to allow me to continue to practise while that appeal is taken."

place." Then the tribunal, as an initial matter, will have to weigh the merits as between the damage done by maintaining the suspension and the public interest in upholding a determination of the discipline committee based on competence. It is one of those issues that has to be decided on a case-by-case basis. But in the absence of the tribunal saying, "Yes, you can continue to practise while we hear your appeal," the law states that he cannot continue to practise.

Mr Wiseman: I guess the bottom line is: How long is it from the time the discipline committee says no until your lawyer writes a letter on your behalf saying you want to appeal? In the meantime, you are out of business. I want to see people treated fairly. If they really think they have been hard done by, by the discipline committee, they should have a chance to appeal. If it is two months down the road and everybody knows he is out of business in the meantime, what happens before it is heard?

Mr Cooper: In the past experience with the tribunal, it gets a quorum together very quickly in this type of situation, and once an appeal is taken, an application for a stay, it is not a long period of time. The tribunal gathers its quorum and hears the argument on whether the individual should be allowed to continue carrying on business. It is a very expeditious proceeding.

Mr Wiseman: Can you tell us the experience under the old bill, how long it has been when the discipline committee made a decision like this and then had an appeal and how long might it be to hear it?

Mr Cooper: I am really not that familiar with the Funeral Services Act as it currently exists. The current procedure is that where the discipline committee makes a decision it takes effect immediately, notwithstanding that an appeal is taken. The appeal under the Funeral Services Act now is to the Divisional Court, so it might take a little longer now to get the Divisional Court together to hear the issue, rather than the tribunal, which is the more informal body. That would be my guess.

Mr Wiseman: It is just that if the person were out of business for a month or two, it would be really tough for him to get back in again.

Mr Cooper: The tribunal, in matters of liquor licensing, sometimes convenes within a couple of days of getting the application.

The Chairman: Is the committee ready for Mr Haggerty's amendment?

Motion agreed to.

Section 16, as amended, agreed to.

Section 17:

Mr Wildman: I note that during the presentations before the committee the Board of Funeral Services suggested changes to subsection 17(2) I am just looking at their suggestions. They suggested that it should open with the words, "A party to the hearing by," and then they made a number of other suggestions for changes. I am wondering why the government has felt that unnecessary.

Mr Cooper: On 17(2), they were asking that all the information available, including any information the funeral director whose conduct was

being investigated would bring to the hearings, should be available to all parties. That is kind of contrary to current situation in administrative law, and in fact in criminal law and quasi-criminal law, where the defendant or the person charged has the opportunity before the hearing or the prosecution to have available all evidence, documentary, etc, before the trial or the hearing starts, but the crown or the board does not have access to the evidence that the defendant or the person whose alleged misconduct is being investigated—

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Mr Wildman: I understand. In a sense, what they were asking would mean that the defendant, for want of a better term, is actually having to provide evidence against himself.

Mr Cooper: No, the defendant would have to disclose the defence prior to the hearing. That is the bottom line.

Mr Haggerty: Disclosure.

Mr Wildman: Right. That would strengthen perhaps those who are requesting a reprimand, if that were the case.

Mr Dietsch: It would be like us getting all your research notes before you come to caucus.

Mr Wildman: Or Gerry McAuliffe getting our expense claims.

Mr Cooper: From the ministry point of view, we have lawyers who represent registrars on a daily basis. They are very sympathetic with the request.

Mr Wildman: Okay. Thank you.

The Chairman: Is there anything else on section 17?

Miss Martel: I will not unduly prolong this, but when I read section 17 again, I do not see that he has to produce his own evidence. I see that he can take a look at anything that has been gathered beforehand as part of the hearing process, which I would think puts him in an advantageous position, if in fact the funeral board is bringing evidence that it has gathered from other people who are concerned with the same conduct. Does it not put him in a beneficial position?

Mr Cooper: That is the same position he would be in in any administrative tribunal, but the request that Mr Wildman was referring to was that all evidence that might be led by the funeral director be available to any party to the hearing prior to the hearing.

Mr Wildman: That is right. So it is to protect him.

Mr Cooper: Yes.

The Chairman: Shall section 17 stand as part of the bill?

Section 17 agreed to.

Section 18 agreed to.

Section 19:

The Chairman: Mr Dietsch moves that subsection 19(5) of the bill be amended by adding after "funeral establishment" in the first line "or transfer service."

Mr Dietsch: Basically, it is the prohibition against operating from a place other than the place that is named in your licence.

The Chairman: Are there any comments on Mr Dietsch's amendment?

Motion agreed to.

The Chairman: Mr Haggerty moves that subsection 19(6) of the bill be amended by striking out "an operator of a" in the second line and inserting in lieu thereof "a licensed."

Mr Haggerty: The reason is to ensure that funeral directors only offer services through licensed funeral establishments.

The Chairman: That is quite clear. Any comments?

Motion agreed to.

Miss Martel: I do have a question before you continue, concerning subsection 19(9). We are talking about operators of funeral establishments and what their responsibilities are. We have also been told that transfer services will be regulated. I am wondering if it makes any sense that we also outline what the responsibilities are of an operator of a transfer service, because some will be within a funeral establishment but some will be on their own, I take it, and operating independently with their own organization. Is there a need to outline what their responsibilities are, almost parallel to what section 9 is?

Mr Tappenden: This is very similar to the response on individual licences related to transfer services. A funeral establishment must necessarily be managed and directed by a funeral director. A transfer service does not have that same requirement, so there is no need to talk about its being managed in the same way here. The concern the ministry does have, of course, is that there be some measure of qualification for the operator of a transfer service, and it is intended in the regulations that those qualifications would be laid out. They would be something less than the qualifications to become a funeral director, but sufficient to ensure that the consumer and the public interest are protected by not having someone just come in off the street.

The Chairman: Is there anything else on section 19?

Section 19, as amended, agreed to.

Section 20:

The Chairman: Mr Dietsch moves that clause 20(3)(b) of the bill be struck out and the following substituted therefor:

"(b) the past or present conduct of the persons referred to in subsection (3a) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty."

Mr Dietsch further moves that section 20 of the bill be amended by adding thereto the following subsection:

"3a. Clause (3)(b) applies to the following persons:

"1. The applicant.

"2. An officer or director of the applicant.

"3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.

"4. Any person having a beneficial interest in the operation of the business of the applicant of licensee."

Miss Martel: This carries on from that particular section. We are fine with that particular amendment. However, it seems to me that when the Board of Funeral Services was before us it was concerned that under this section, if the registrar suspected that the person who wanted the licence or renewal was not capable mentally to have that, there would be some mechanism to refuse him a licence or renewal on that basis. I am wondering if we are going to be looking at that or dealing with it in another section.

Hon Mr Sorbara: The question that is raised is dealt with under the sections dealing with incompetency that we discussed earlier on in this morning's proceedings. The purpose of this section, as I tried to explain in my opening comments as clause-by-clause consideration began, was to permit the consideration of conduct of officers or directors of corporations holding more than 10 per cent of the equity shares of a corporate applicant.

The effect of the two amendments is to ensure that one can look into the corporation behind the corporate veil and identify those individuals who may be the movers behind the application and determine, based on their qualifications, competence, conduct and past history, whether or not a licence should be granted. The issue of incompetency is really dealt with elsewhere.

Miss Martel: I am going back to the subsection that was dealing with incompetency this morning, subsection 16(4). It was concerning a hearing before the discipline committee itself, that it could find a funeral director incompetent for mental incapacity. I am suggesting that section probably does not quite apply, because we are looking at someone who is applying for a licence. He may not even be a funeral director yet. I am just trying to suggest that we are looking at two different things.

Mr Tappenden: If I can respond to that, the terms with respect to licensing that are normally used and that are used in this statute are "honesty and integrity" and "acting in accordance with the law." There is provision in paragraph 46(1)35, which talks about the government's ability to prescribe in regulation "practices or actions that are evidence of incompetency or lack of honesty and integrity." It is our belief that in the broad sections dealing with honesty and integrity and "in accordance with the law," if in fact there has been a finding of incompetency by a discipline committee or some reason to believe the person is incompetent, it could be dealt with under honesty and integrity in the licensing provisions.

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Miss Martel: Fine.

Mr Wildman: I am not a lawyer and I would not want to suggest that no one could be in his right mind to want to get into this business, but it seems to me that that is a very wide interpretation of the words "honesty and integrity," to deal with competence. Are you suggesting that in law, a person who is dishonest is therefore incompetent?

The Chairman: Mr Sorbara, how about that?

Hon Mr Sorbara: I will just let that one hang out there. The point that has been raised is whether or not there is sufficient authority in this section setting out the requirements that have to be met in order to be entitled to a licence to reject on the basis of competence.

If that is a problem for the committee, I feel there would be no difficulty in amending further clause 20(3)(a) to add the word "competent" at the end of the first line so that clause a would read: "(a) the applicant cannot reasonably be expected to be competent or financially responsible in the conduct of the applicant's business." If that would satisfy my friends, the ministry and I would feel comfortable with that sort of amendment.

Mr Wildman: We agree with the minister's suggestion. The only question I have, and I am not trying to make it too complex here, is: Would there then be provision for an applicant who felt unfairly adjudged on his application to have an appeal?

Hon Mr Sorbara: The short answer is yes. The appeal mechanisms as set out in the act would have that applicant go to the Commercial Registrar Appeal Tribunal, and on an issue of law, perhaps, to the Divisional Court. The answer is yes.

Mr Wildman: That is fine.

Hon Mr Sorbara: Are we still dealing with the first amendment?

The Chairman: We are still dealing with Mr Dietsch's amendment.

Mr Wildman: Mr Dietsch's amendment, in our view, is very similar to part of what was requested and we have supported it.

The Chairman: But we have to go back to this. Can we deal with Mr Dietsch's amendment, then it will not affect this? All right. All those in favour of Mr Dietsch's amendment?

Motion agreed to.

The Chairman: Does the minister wish to move that amendment? Sorry; Mr Dietsch.

Hon Mr Sorbara: I cannot move the amendment, but I want to discuss it with my very competent colleague—

Mr Wildman: Why do we not stand it down, then, and move ahead on something else?

Hon Mr Sorbara: We will draft it when we come back. Are there drafters out there? It is rather draughty over here.

The Chairman: There is one more section. We will stand that down and we will deal with the next amendment on section 20.

Mr Haggerty moves that subsection 20(4) of the bill be amended by inserting after the word "with" in the fourth line the words "this act and".

Mr Haggerty: The reason is that the applicant must comply with requirements in the act as well as the regulations.

The Chairman: Any questions on Mr Haggerty's amendment?

Hon Mr Sorbara: It is a technical drafting correction.

The Chairman: Those in favour?

Motion agreed to.

The Chairman: Do we wish to move the other one now or is that rushing it? Shall we stand down section 20?

Mr Wildman: Why do we not stand it down?

The Chairman: Right. Miss Martel. Section 20.

Miss Martel: In subsection 20(1) it says, "A person may apply to the registrar for a licence to operate a funeral establishment...." Why would it be "may" and not "shall"? I thought you had to have a licence in order to operate. Is there an exemption or something special we should know about where you would not have to apply?

Mr Tappenden: No. I believe that is the phrase that is used consistently in all of our licensing statutes. It really is saying that if a person wants a licence they may apply, but no one has to apply if they really do not want a licence.

Miss Martel: Thank you.

Hon Mr Sorbara: It is called statutory paraphernalia.

The Chairman: Anything else on section 20? Is it agreed that we will stand section 20 down? All right, we will stand section 20 down until Mr Dietsch is ready for that amendment.

Section 21:

The Chairman: Mr Haggerty moves that section 21 of the bill be amended by adding thereto the following subsection:

"(3) Subject to section 22, the registrar shall refuse to issue or renew a licence if the applicant has not paid the fee that is prescribed."

Mr Haggerty: The reason is the clarification: no entitlement to a licence or renewal without payment of fee. That is reasonable.

Interjection: Yes.

The Chairman: It has been declared reasonable. Are there any other comments on Mr Haggerty's amendment? Shall Mr Haggerty's amendment carry?

Motion agreed to.

The Chairman: Anything else on section 21?

Mr Wildman: As I understand it, in the presentations that were made to the committee the Federation of Ontario Memorial Societies requested that there be provision that any corporation or group that was affected here should be required to have full disclosure of ownership and that this should be a matter of public record. Is there any problem with suggesting that people should know who owns the funeral homes or the—

Mr Tappenden: Your point is well taken. There are two relevant clauses in the bill. One has to do with the disclosure of information to the public by the licensee. It is planned that in the list of items in regulation every licensee would have to disclose to the public. It would include who owns the establishment on things like letterhead and business cards and so on so they know with whom they are doing business.

Second, it has been difficult at times in the past for the board to be able to trace ultimate ownership because of four or five corporate levels of ownership involved. In the amendment you just dealt with in section 20, that allows the board to ask for information, on licensing and renewal occasions, for anyone who owns more than 10 per cent of the shares and for anyone who has any beneficial or controlling interest to be disclosed to the board so that it also knows.

Mr Wildman: So that provision would be a part of the public record?

Mr Tappenden: Yes.

Mr Wildman: Fine.

Mr Wiseman: Would that be on the letterhead, numbered company so-and-so, or does it really have to have the person's name? For a layperson, if it has numbered company so-and-so, it does not mean anything and most people do not take the time to see who are the officials behind the numbered company. I am running into that more and more all the time where I am trying to find out who owns a numbered company, and it does take a little time.

Hon Mr Sorbara: You should understand that the general law and specific corporate law in Ontario do not require a private company to disclose the shareholders, the people who hold equity in a private company. That has been a very long tradition, I think one that is an important part of the fabric of company law, not only in Ontario but in most common-law jurisdictions.

There are different provisions relating to public companies. A whole different set of disclosures has to be made in respect of companies whose shares are traded in a public way on a stock exchange.

What we are trying to achieve in this act is a greater degree of disclosure, but that would not go so far as to say on the letterhead that corporation ABC, which is a private company, is held by Susie Two Shoes up in Timmins and Johnny Nobody down in Windsor. We are not going that far, but there are disclosure provisions that allow an individual to understand whom that individual is dealing with.

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Mr Wiseman: Could it be that it would say—they usually keep the

funeral establishment's name—Wiseman's Funeral Home, but Wiseman's Funeral Home is no longer run by him?

Hon Mr Sorbara: By the way, did you declare that conflict when you came into this committee?

Mr Wiseman: Floyd and I have one. It could be a numbered company with no—

Hon Mr Sorbara: An identification. We all have a certain fear and trembling when people use numbered companies, but does a corporate name, that is, Deep Six Enterprises Ltd, help you out?

Mr Wiseman: In our discussions last week we heard that when a certain group pretty well got control of the funerals in and around Toronto, as I understood it—I think it was Toronto—it was made to reduce the price, because it had put it up 15 or 20 per cent because of the monopoly.

Hon Mr Sorbara: This was Hamilton.

Mr Wiseman: I guess the federal government stepped in there. Then we heard about the same thing happening in British Columbia, but the federal government did not seem to take the same approach there. I just wondered how in the Sam Hill you know when they are getting a large percentage of the market when they can hide behind numbered companies. I do not know how you get around that.

Hon Mr Sorbara: The amendments in section 20 will provide that information for us, but we have to be very clear that it is not within the constitutional competence of the province to regulate those sorts of corporate concentrations. While the information might be available—the issue comes to the public attention often by way of other funeral directors saying, "My goodness, so-and-so has now captured the market. I don't like it and I think I need to complain to some level of government"—the level of government with the constitutional competence is the federal level under the federal Competition Act.

Disclosure will happen under this act. Disclosure happens more extensively in terms of the nature and operation of the company if that company, such as Arbor Capital Inc, for example, is a publicly held corporation whose shares are traded on the stock exchange; a very high degree of disclosure has to be filed with the Ontario Securities Commission. That information is available through there. We are not trying to create double disclosure; we are trying to create sufficient disclosure so that the government and the people know who is doing what and we can identify the real players behind the corporate veil in the operation. I think we do it in this section.

Mr Tatham: In other words, will the Arbor funeral people then have to put their name on their sign and on their letterhead?

Hon Mr Sorbara: They will have to be identified as Arbor Capital Inc or whatever the corporate name is. Then, if you follow it through, that name is a name that one can search in the public records to find out what kind of corporation it is. Finding that it is a public corporation, one can then go to the Ontario Securities Commission and look at filings that public corporation has made to identify its financial structure.

Mr Wiseman: It would not be there in the cemetery.

Mr Tatham: Would it be on the sign or on their letterhead?

Mr Haggerty: When you get the bill it will probably be there.

Mr Wiseman: They are there but not seen.

The Chairman: Do we have an answer for Mr Tatham?

Hon Mr Sorbara: That matter will be set out more particularly in regulation, sufficient information so that the public can know whom it is dealing with. You would not want to have a situation where 17 subsidiary corporations are listed on a letterhead or outside a funeral home, such as McDonalds and Brown's, or whatever it is called, in the same typeface, but you would want to be able to find out very easily what the legal entity is that you are dealing with. We will frame regulations that make that disclosure possible and clear to the public.

Mr Wildman: I have the research document that was provided to us on the request of my colleague, Mr Farnan, which talks about corporate concentration in the bereavement industry. On page 2, it says that Trillium now owns, if I am reading this correctly, 22 funeral homes.

Hon Mr Sorbara: Yes.

Mr Wildman: Is Trillium not a related company of Arbor Capital?

Hon Mr Sorbara: I am told that Trillium is a wholly owned subsidiary of Arbor Capital Inc.

Mr Wildman: Right. That is what I understood. If what you are talking about in terms of disclosure is for one of the four funeral homes in Ottawa, for instance, that they own, it would have to be stated that Trillium is the owner. Would it also be obvious in the reporting that Trillium is owned by Arbor Capital, which as I understand it, also owns a cemetery just outside Ottawa? If the particular funeral home is directing or advising the family to have the remains interred at the Capital Memorial Gardens, it might be more than a coincidence since they both are owned by the same company. If they were just told that Trillium was the owner of the funeral home and they did not know that Trillium was also owned by the same company that owns Capital Memorial Gardens, they might not see the connection. The fact that they do see the connection might not make any difference anyway, but we are just talking about full disclosure here.

Mr Dietsch: We are sort of moving away from the amendment that is on the table. I do not disagree with the point that is being raised, but I am just wondering—

Mr Wildman: I am sorry. I raised a question about full disclosure—

The Chairman: Are there any further comments on—we are still dealing with the amendment moved by Mr Haggerty.

Mr Dietsch: The amendment by Mr Haggerty on section 21 dealing with the fees, correct?

The Chairman: Any further comments on Mr Haggerty's amendment?

Mr Wildman: I thought we passed that.

Mr Dietsch: No, we did not pass that yet.

Motion agreed to.

Section 21 agreed to.

Mr Wildman: I would like my question answered.

Hon Mr Sorbara: I am going to try to answer Mr Wildman's question as best I can, although it is difficult to apply a specific answer to Trillium and Arbor Capital without understanding the corporate structure. If I could just give you an example, in the establishments that Trillium has an interest in, sometimes it is a majority and sometimes it is a minority interest. One would also have to know to what extent Trillium is controlled by Arbor Capital Inc. We are going to have to do some work on creating a regulatory framework that does not invade the privacy of capital and the application of capital, and at the same time provides sufficient disclosure so people know who they are dealing with. It is difficult to tell you exactly what those are going to look like, but I am trying to explain the objective, which is disclosure, so that people know who they are dealing with, and the protection of privacy to the extent that that is appropriate within a financial context.

Mr Wildman: I understand what you are saying. I am not singling this out, I just used this as an example because it was one I knew about: If a family is having a funeral at one of the four funeral homes that are owned by Trillium and, for the sake of argument, the family would like to have the interment at Pinecrest Cemetery in Ottawa but the funeral director is advising, for whatever reasons, that the interment take place at Capital Memorial Gardens, it might be of interest, shall we say, to the family to know that Capital Memorial Gardens is owned by the same company that owns the funeral home with which they are dealing.

Hon Mr Sorbara: I think, though, there you are talking about tied selling, and that is prohibited under the statute.

Mr Wildman: No, I was not talking about any kind of prepaid or any solicitation.

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Hon Mr Sorbara: "I want you to buy that, and we're going to do that, and we will deal with the funeral; and, by the way, we recommend only that place over there for a burial site;" that is tied selling and that is prohibited. We would want to have regulations that allow people to get that information as easily as possible.

The Chairman: But tied selling means, basically, that it is a requirement.

Mr Wildman: No, this is just advice I am talking about.

The Chairman: Just a suggestion, which would not be prohibited. That would not be prohibited under this bill, if they just said it would be good idea that this person should be buried in this cemetery.

Hon Mr Sorbara: Under the operational aspects of the bill, including

regulations, we will be able to deal with that matter, because we are trying to create as much freedom as possible to move around in the marketplace. Those matters will be dealt with in regulation.

Mr Tappenden: If I can just amplify, under the federal Competition Act, things like tied selling are already illegal, as the minister has pointed out. Because we will have, as is dealt with later in the bill, the prohibition against operational connections between cemeteries and funeral establishments, operational connections will be defined in regulation to include things like referral selling, ie, when the funeral establishment says: "Oh, you want a cemetery plot? Well, go to this cemetery," and only gives one choice, or joint marketing whereby they say, "We have a little ad here that if you buy your funeral from us you get a special at the cemetery" or something like that. It includes common boards of directors and things like that, to give some teeth and some substance to that notion of operational connection.

Mr Wildman: The chairman has made a good point here. I understand and I support the view that we are going to prevent this kind of sales agreement or approach. But I am just talking about where maybe there is a case of a sudden death where the family makes arrangements with a funeral director and they ask for advice and the funeral director, instead of saying, "You could go to Pinecrest, you could go to Capital Memorial Gardens or you could go to a number," just says, "Capital Memorial Gardens is a place where you could go." He is not selling and he is not involved in some kind of sales agreement or anything like that; he is just giving advice. I am just saying it might be of interest to the individual—he still might take the advice—if he knew the ownership connection.

Mr Tappenden: I think the key, as the minister has pointed out, is that what we really have to do is make a determination in each case of every funeral establishment as to who has controlling interest and ownership. In the case of a Trillium Funeral Service Corp home, for example, there are 18 which they have a majority ownership in and a controlling interest in. It is clear that we would say, "Funeral Home X, a subsidiary of Trillium Funeral Service Corp." We would require that kind of disclosure.

Where there is a minority ownership of, say, 49 per cent in a funeral establishment, we would have to make a determination as to whether that was controlling interest or not and then decide whether we would require the name Trillium to be connected to that or not, based on what we knew about the share structure.

Mr Wildman: I understand all of that. My question, though, is very simple: will you also require that in the case where Trillium has a controlling interest, not where they have a minority interest, it would also be disclosed who owns Trillium, that is, Arbor Capital Inc?

Hon Mr Sorbara: It is difficult to answer that now unless we examine the corporate structure and put it into some sort of context, but it is really difficult to put on the record exactly what the answer to that may be with respect to a particular corporation and a particular business undertaking,

Mr Wildman: Again, I am not just talking in terms of particular establishments, I am talking about it in general terms. What you are saying is that you have to look at each corporate structure individually. I guess that is what we have to accept.

Section 21, as amended, agreed to.

The Chairman: Moving back to section 20, which we stood down, Mr Dietsch has an amendment.

Mr Dietsch moves that clause 20(3)(a) of the bill be amended by adding "competent or" following "expected to be" in the first line.

Mr Dietsch: For the benefit of the committee, it would read, "The applicant cannot reasonably be expected to be competent or financially responsible in the conduct of the applicant's business."

The Chairman: Is that clearly understood? Any comments about Mr Dietsch's proposed amendment?

Motion agreed to.

Section 20, as amended, agreed to.

Section 22:

The Chairman: Mr Haggerty moves that subsection 22(3) of the bill be amended by striking out "registrant" in the first line and inserting in lieu thereof "licensee."

Mr Haggerty: The reason for this amendment is that the persons are licensed in the act, not registered.

Motion agreed to.

The Chairman: Mr Haggerty moves that subsection 22(4) of the bill be amended by striking out "registrant" in the first line and inserting in lieu thereof "licensee."

Mr Haggerty: This is for the same reason as the previous amendment.

Motion agreed to.

Section 22, as amended, agreed to.

Section 23:

Miss Martel: I have a question concerning the process for a person who has been refused a licence and now wants to reapply. In section 23, I understand that one has to wait at least a year, but I am wondering about what the procedure is for reapplication, what has to be gone through in order to get a licence back.

Mr Tappenden: The procedure for reapplying is the same procedure as applying, the filing of an application form, payment of fees and so on, and consideration by the registrar licensing committee. The procedure is identical, as I understand it.

Miss Martel: If a director has had the licence revoked or suspended, I would take it it was for a fairly serious action. Is the only penalty at this point waiting a year and then reapplying, or are there provisions that the director will never get it back?

Mr Tappenden: No. There are no provisions that once a person's licence has been revoked, he or she can never get it back again. However, the

burden of proof on the applicant is fairly significant. Where it talks in section 20 about if the applicant cannot be reasonably expected to be competent or financially responsible, the past and present conduct of the applicant; in most of the businesses we regulate if someone has committed a very serious offence that has resulted in the revocation of a licence, then if that person comes back six months or a year or two years later, it is very unlikely that he or she would be reconsidered, although every person's application is considered on its own merits. If it was 10 years later and the person could demonstrate that they have indeed been in no difficulty in terms of their conduct in the last 10 years and perhaps have done something to show that they deserve a licence, then that of course would be considered.

I think the provisions give the board adequate power to not have to reregister someone too soon but they also give the applicant the necessary rights to come back and apply essentially whenever he or she wants after that waiting period.

Miss Martel: I take it in reading this that the application is made to the registrar. Will the board be notified that this person is requesting a licence again, because if the board felt it was a serious enough matter that the licence had to be suspended or revoked, would that board not want to take a look at all of the evidence again before the registrar grants a licence? I am just concerned that he is the only one who is involved in the process of reissuing the licence.

Mr Tappenden: She, actually. She is sitting in the audience. That is why I point that out. She is an employee of the board and so acts on behalf of the board and at the direction of the board.

Mr Lupusella: I have a question I would like to raise. In the case of a licence being dormant, is there any provision in the act to deal with this particular problem?

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Mr Tappenden: A licensee under the act may continue to renew his licence indefinitely, in effect, whether or not he is active. As I understand it, there are probably some 600 to 800 inactive funeral directors, if I can use that term, who are currently licensed in the province. However, as a condition of retaining that licence, they must go through ongoing education requirements periodically. I think it is once every three years they have to go to a certain number of hours of ongoing education. They are required to do that whether they are actively practising or working or not.

Mr Lupusella: Is there any provision in the act dealing with a dormant licence with the scope of making profits by reselling the licence to others?

Mr Tappenden: The licences that are granted by the Board of Funeral Services are nontransferable. They are not something you can sell or not sell. If you are licensed as a funeral director, it is akin to being licensed, in effect, as a physician or a lawyer in the province. It is not something you can sell. You have to qualify for it.

An establishment is a little different in that the assets of a funeral establishment may be sold, but the licence may not be. If someone purchases a

funeral establishment from someone, he has to then go and apply, as the owner of that establishment, for a licence.

Mr Lupusella: Thank you.

Section 23 agreed to.

Section 24:

The Chairman: Mr Dietsch moves that subsection 24(3) of the bill be amended by striking out "subsection 22(2)" in the second line and inserting in lieu thereof "section 22."

Mr Dietsch: It is in relationship to the fact that the concern should apply to the whole section, not just subsection 22(2).

Motion agreed to.

Section 24, as amended, agreed to.

Sections 25 and 26 agreed to.

Section 27:

The Chairman: Mr Haggerty moves that subsection 27(4) of the bill be amended by inserting before "registrar" in the second line "director or."

Mr Haggerty: The reason is that either the director or the registrar could issue an order.

Motion agreed to.

The Chairman: Any comments on sections—

Mr Wildman: Sorry; we have some questions.

The Chairman: On what section?

Miss Martel: On section 27. It was a question to Mr Tappenden concerning advertising. When we had Mr Loughheed before us, he was quite adamant that we should be ensuring in regulations that you could not have celebrities advertising. I only point that out to the ministry again, not knowing where the regulations sit at this point, so that we can be assured as a committee that this will be looked at.

Mr Tappenden: Yes, I can certainly assure you that will be looked at as we draft the regulations.

The Chairman: Are you worried about George Burns?

Miss Martel: He is too old for me, thank you.

Section 27, as amended, agreed to.

Section 28 agreed to.

Section 29:

Mr Wildman: I would like to know what the definition of "traditionally" is.

The Chairman: Mr Tappenden, a good question to you.

Mr Tappenden: The term "traditionally" is not defined in the bill and it is not defined for the reason that we felt a definition would probably be more problematic than the absence of a definition. It is like terms such as "the public interest" or "generally" or other terms that are intended to give some sense of the meaning without having them precisely defined.

It would be up to the board, a tribunal or a court of law to determine whether or not someone seeking a right to practise something in a place of worship not be subject to licensing or censure by the board. It would be up to a court of law, a tribunal or the board to interpret that in the individual circumstance.

I can tell you why the section is there. Perhaps that may be helpful. There are many, many faiths in which memorial or funeral services are a part of the faith, from Protestant to Catholic to many others. The Jewish and Islamic folks who presented to the committee last week have particular rites and ceremonies, and what we wanted to avoid here was the need to license priests, rabbis, churches, synagogues or mosques.

What we are saying is that if you conduct a rite or a ceremony that is traditionally part of your faith in a place of worship, every church, synagogue and mosque in the province does not all of a sudden have to apply for a licence. That is really what that is intended to cover.

Mr Wildman: I can accept that. My only comment, though, is that surely as legislators it is bad practice to write law that we intend will at some point be tested in the courts and the courts will decide what it means. Surely we should be trying to say what we mean.

Mr Tappenden: Certainly, from the ministry's point of view, your point is well taken, but the definition of what rites and ceremonies are currently or traditionally provided at places of worship would be so long and convoluted, and would also probably leave out certain groups or certain practices we simply were not aware of, that to be that precise is probably not possible.

The intent here is to exempt places of worship from having a licence where there are traditional rites and ceremonies. Where a place of worship or clergy in a place of worship get into doing things to do with the preservation or preparation of the body and so on, that is where the difficulty is going to be for the board to decide. Is that, in effect, the provision of funeral services and is it something more than what is traditionally provided in a place of worship and therefore do we need to request that, for example, the Islamic group, as it asked, have its mosque licensed?

Section 29 agreed to.

Sections 30 and 31 agreed to.

Section 32:

The Chairman: Mr Dietsch moves that subsection 32(1) of the bill be struck out and the following substituted therefor:

"(1) Prior to the death of the beneficiary the purchaser or a person designated in the contract by the purchaser may cancel the contract at any time."

Mr Dietsch: Really, it is to prevent the wording in this cancellation right from being overridden by contractual agreement.

Motion agreed to.

Section 32, as amended, agreed to.

Section 33:

Mr Wildman: Again, in the presentations before the committee, the memorial societies indicated that this section should not be invoked to deter memorial societies from providing members with information and forms so that they can do their own prearrangements. How is that protected? Were the memorial societies just overly concerned or cautious in this case or could it in fact be that section 33, which states "No person shall charge or accept any payment with respect to a perarrangement," would also then in some way prohibit someone from giving information and advising on how to arrange and make prearrangements on his own? Would it prohibit that?

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Mr Tappenden: Memorial societies are by definition nonprofit groups, and although their sole purpose is to advise people on simple, low-cost funeral and burial arrangements, my understanding of the way they work is that you pay a membership fee to belong and that in itself would not be construed to be payment with respect to a prearrangement. You are basically joining a club and you pay for that. Any advice they then give you about prearranging your funeral is done cost-free, so you do not pay for that advice and therefore they would not be prohibited from doing what they do.

Mr Wildman: Okay. So the fees for joining would not be seen as a prepayment for the advice or the information that they then receive because they are members of the society.

Mr Tappenden: That is correct.

Section 33 agreed to.

Sections 34 and 35 agreed to.

Section 36:

The Chairman: Mr Haggerty moves that clause 36(1)(c) of the bill be amended by striking out "owner" in the first line and inserting in lieu thereof "operator."

Mr Haggerty: The reason is that it should be through the operator of

a funeral establishment, not owner. If you look at subsection 36(2), it has at the opening "An operator," so there is a parallel in the two clauses.

Motion agreed to.

Section 36, as amended, agreed to.

Sections 37 and 38 agreed to.

Section 39:

Mr Wildman: I think my colleague has an amendment.

Miss Martel: Yes, we do. We do this in memory of our former colleague, Mr Swart.

The Chairman: I wish you would not put it that way.

Miss Martel: Sorry; I guess that was a little—

Interjection: He is still with us.

Miss Martel: Right. Just for the record, I apologize, Mel.

At this point, we are going to move the separation not only of funeral establishments and cemeteries, but also we would like to add to that owners of monument establishments. So the motion we are moving at this point in time refers to separation of the three sectors. I have a motion prepared. I hope it is correct, but the intent was that we put on record our concern with the concentration that is going on and our hope that there will be a separation.

The Chairman: Miss Martel moves that no person shall own or operate a funeral establishment or transfer service in conjunction with the owner of a cemetery or crematorium or in conjunction with the owner of a monument establishment.

Miss Martel: I hope that is the proper form to put into effect the separation we want to talk about.

The Chairman: Do you wish to speak further to your proposed amendment?

Miss Martel: Only to say that during the course of the public hearings I was struck by the concentration that is going on in the market at this point in time. I think it is incumbent upon the government to recognize that this in fact is happening and that not only are there within each sector some bigger companies that are starting to eat up the smaller ones, but also we are now seeing that starting to go across different sectors, where a company like Arbor Capital Inc, for example, is both in the funeral business owning funeral homes and now in the cemetery business.

We talked to the Loewen Group as well and got a real indication of what is happening in the marketplace. I think the concentration we are seeing is not going to be to the benefit of consumers in the long run in any way, shape or form, and it needs to be addressed.

We are moving this particular amendment because my former colleague, who was a great advocate in terms of changes that had to be made in the

bereavement sector, felt this was necessary; that is, the complete separation in order to ensure competition in the future and to ensure that independent small family businesses would survive. We are moving it on that basis.

Mr Haggerty: I just listened to the proposed amendment. Looking at section 39 and the area of the regulations there, it says in section 46 that, "the Lieutenant Governor in Council may make regulations," and I am looking at paragraph 34, "regulating, controlling and prohibiting the use of terms, titles or designations by licensees." Looking at the intent of the bill now, surely there is an indication there that it will serve the objective proposals in that on separation of the transfer and funeral home services. I cannot see much more in what you are proposing in your amendment that is not already covered in that. I could be wrong.

Mr Runciman: I would just like to pose a question to one of the ministry officials. I am not sure if it is appropriate.

The Chairman: Is it on this?

Mr Runciman: On this issue.

I know there has been a significant lobby effort over quite a period of time in relation to this matter and I know the ministry has certainly been lobbied actively. I am wondering why they have, up to this point, resisted that lobby. What is the rationale within the ministry in respect to not providing this kind of separation within the legislation?

Mr Tappenden: The government has certainly been aware of the many comments that have been made by all parties on this matter. The Ontario Monument Builders Association has been the most vocal in promoting separation of the monument sector, as well as separation between the funeral and cemetery sectors. There are probably a dozen reasons that the ministry feels that is an inappropriate form of separation and I would be happy to go through some of those reasons with you.

The other point I would make in advance of those specific reasons, however, is that there are at least an equal number of groups, including monument dealers, who are not OMBA members or some of whom are OMBA members who have come both before this committee and made representations to government who have said they feel that is entirely inappropriate in the public interest.

If you like, I could go on to talk about some of the specific reasons we felt separation of the monument sector was not appropriate.

Mr Runciman: Perhaps you could highlight just a few.

Mr Tappenden: Number one, I guess, would be that in effect what the OMBA proposal puts forward would allow only monument retailers to sell monuments. We believe that would be anticompetitive, that it would provide consumers with fewer choices as to where to purchase monuments and that would result in less choice and in effect higher prices. We have reason to believe, from the price comparisons we have done as a ministry, that in communities where either funeral directors or cemeteries sell monuments or where there is significant competition among monument dealers, the prices to consumers have dropped as much as 15 per cent and the markup has tended to be reduced from

between 60 per cent and 80 per cent to 35 per cent and 50 per cent. So we believe it is in the consumer's interest to have access to competitive sources

Secondly, many cemeteries around the province—we think in the ministry particularly of smaller cemeteries that have very few burial spaces left or that do very few interments in a year and yet have very high costs of operation, of maintenance—rely on the income from monuments to supplement their income in order to adequately maintain the cemetery. Many of those are at risk of going out of business in effect as voluntary or charitable operations and being turned over as a burden to the municipality.

We did a review of our own computer files based on some data in 1987 which indicated that over 50 nonprofit cemeteries in the province sell upright monuments and probably five times that many also sell markers. There is some arbitrariness to the notion that only independent monument dealers should be able to sell monuments in terms of what the definition of a monument is. I have been taken out and shown the different variations of what constitutes a monument versus a marker versus some other form of memorial, and it is not at all clear, if we decided to regulate monument dealers, where we would draw the line as to what is a monument versus some other form of marker.

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There is also the notion that monument dealers sell pieces of stone. I do not mean in any way to detract from the craftsmanship or profession of building and selling monuments. I only say that to differentiate between funeral establishments and cemeteries, which deal with the handling and disposition of human remains, which is clearly why they were regulated in the first place. Because they deal with human remains, there were some health and societal issues there. In effect, monument dealers are retailing a product rather than dealing with the disposition of human remains.

Those are some of the highlights. I dare not go on too long.

Mr Runciman: Just one question: What about the notion of tax-exempt entities competing with the private sector? How do you deal with that?

Mr Tappenden: I would be happy to address that. When the monument builders came forward to us with that particular point, we looked at it very closely and went and met with officials from the Ministry of Revenue to discuss it. There has been a recent task force or commission—and I will look up the name of it for you for the record—which reviewed that issue quite apart from this particular consultative effort.

The Commission on the Reform of Property Taxation in Ontario, which is the name of the commission I was looking for, reviewed this matter. They came to the same conclusion as the Ministry of Revenue, that there should be no change in the present status of the tax exemption of cemeteries. My understanding is that that is based on the traditional role and the traditional ownership of cemeteries in our society. About 99 per cent of them are nonprofit, religious, municipal, voluntary organizations and, because of the service they provide to the community, they should have tax-exempt status

We looked further at the issue of whether or not cemeteries should be perhaps asked to pay property and business taxes on those parts of the cemetery wherein they sell monuments. In fact, many of the cemeteries have said: "We would be happy to do that. It wouldn't amount to very much, so we'd

be happy to do it." The Ministry of Revenue's position is that it would cost far more to collect those taxes than would be collected.

In fact, we did a little analysis of how much those taxes would amount to. The Ontario Monument Builders Association has said to us that the total percentage of its gross sales which result in payment of taxes, in terms of property, business and income tax, is roughly 3.3 per cent of its total gross sales on average. That depends of course on the level of markup. Mr Mueller gave testimony to the committee earlier on in the week, as a monument builder, that in his estimation it was roughly 1.5 per cent of gross sales unless the markup on monuments was in excess of 50 per cent.

We looked at a little cemetery operation, as an example, that I think would sell something like 10 markers and 10 monuments in a year and used as an average cost \$600 for the marker and \$2,000 per monument. We determined, on the basis of those figures, that this small cemetery selling that level would be paying around \$15 to \$30 in taxes for every \$2,000 monument it sold, and I think the figures were something like between \$5 and \$10 in taxes for every \$600 marker it sold. I could give you those figures if you would like me to explore that further, just to be exact. But the amount of tax they would be paying, should they be subject to those taxes, first, would be so insignificant as to not make a difference in the competitive marketplace, and second, to be not worth the while of the government to collect those taxes. It would cost the taxpayer more to collect them.

The other thing I would point out is that under the new legislation, cemeteries will be required to pay licensing fees. Monument dealers will not be regulated under this legislation and they will not be required to pay licensing fees. That same small cemetery that would have to pay that very small amount in taxes should it be subject to that requirement, if it did 20 interments in a year, on the basis of \$10 an interment would have to pay \$200 a year in licensing fees, which would more than exceed the amount it would have to pay in taxes.

As we talked about a level playing field as it came up in the committee discussions last week, we believe the licensing fee requirement more than offsets the tax requirement in terms of the cost burden to the cemetery and that the difference in terms of tax status would make such a small difference to price in the competitive marketplace as to be quite meaningless.

Mr Wildman: I appreciate the explanation that has been given, but I really think that it misses the central point of my colleague's amendment, which is to deal with the whole issue of, for want of a better term, vertical integration in the bereavement industry.

I have a question, and then I would like to make some comments. My question is: Are there situations where large companies that own private cemetery operations have regulations regarding the type of markers that can be used in their cemeteries and, as a part of the agreement to purchase a plot, the consumer must agree to use a particular type of marker, and in essence, that marker is produced by a related company and means that the cemetery operation, in effect, is requiring the consumer to use a particular type of marker and that it then profits from its sale? Is that the case?

Mr Tappenden: I am pleased you raised this, because I did not want to give the impression that we had done nothing in this bill to respond to the monument dealer's concerns. When Mr O'Brine and others raised this in the Ontario Monument Builders Association's presentation, they were questioned

about the beneficial impact of subsection 50(6) of the Cemeteries Act, which is really where we deal with the question of monuments, because it is considered a cemetery supply.

I will read it to you: "A bylaw filed with the registrar"—which earlier in the section says that it must be approved by the registrar—"under this section shall be approved by the registrar unless the approval is not in the public interest or the effect of the bylaw is to give the owner an unreasonable or unfair competitive advantage over another supplier of cemetery services or supplies."

That was directly put into the legislation to avoid any anticompetitive bylaws or behaviour on the part of cemeteries towards monument dealers. And you are quite correct that there are many cemeteries around the province now that have very detailed bylaws with respect to markers and monuments. There is one chain of private cemeteries, for example, that for the most part will not allow upright monuments of any kind. Their rationale for doing that is that is easier to mow the lawn if you can just go over everything and it is, hence, cheaper to maintain it.

There are other cemeteries that do not allow uprights monuments for what they view as aesthetic reasons. There are many cemeteries that have different sections of the cemetery set aside for flat markers, upright monuments and so on. There is one cemetery that I know of that says, "If you want to bury someone here, you have to have a cross placed on the grave if you want any form of marker at all."

The impact of this section is really to remove anything that, from a business point of view, is discriminatory. When it comes to the monument dealer's right of access, there will be no things such as Mr O'Brine suggested—gate fees and those other kinds of things that he pointed to in the United States to deter monument dealers from having reasonable, competitive and fair access to a cemetery. If anyone passes a bylaw that says, "You have to have a monument of this particular size and you must purchase it from us," or, "You must purchase it from company X," that bylaw would not be permitted.

Cemeteries will be allowed to set technical standards for the installation of monuments, providing they are fair and reasonable, but they will not be able to prohibit another supplier from coming in and doing that.

Mr Wildman: In other words, if this were a section that was to pass in the other bill, you are saying that a cemetery could indeed pass a bylaw saying, "We only will have flat markers," but it would then not be able to prohibit any kind of monument manufacturer from producing flat markers that could comply with its bylaw and thus be in a competitive position with the owner of the cemetery.

Mr Tappenden: That is correct. We believe we have responded quite adequately to the monument builders' concerns about an unfair advantage to the cemetery by requiring that cemetery bylaws be approved by the registrar and that the registrar may not approve any bylaw which gives the cemetery an unfair competitive advantage.

Mr Wildman: Okay. But the proposed section of the other bill which you are referring to does not deal with ownership, so it would still be possible for a company that owns a cemetery or a chain of cemeteries across

the province to also be in the business of manufacturing or, if not manufacturing, retailing markers and monuments.

Mr Tappenden: It is not only possible, it exists at present. There are cemetery owners who also own monument companies. I think the point to be made here is that when it come to disclosure to the consumer, we will be insisting that where a cemetery, or a funeral establishment, for that matter, makes available information on other products and services—a funeral director making reference to cemeteries or a cemetery owner making reference to monuments—it must supply information on more than one source.

The Chairman: Before we go any further, Mr Tappenden and Mr Wildman, do you wish to carry on the debate on this section any longer? If you do, we should recess until two. If you want to deal with it now, that is fine. It is entirely up to the members of the committee.

Mr Wildman: I think we can deal with it now.

Miss Martel: Mr Chairman, if I may, I just have a final comment. I will be very quick. I just want to get two issues on the record. I recognize the numbers in here and that this is not going to pass. I raise two concerns that I would like to put on the record now: I really think the ministry, after all is said and done, should begin a serious look at concentration in the market, because I think during the course of the public hearings here we got a fair taste of what was happening. We had a good discussion with Mr Loewen, but certainly when we looked at his acquisitions over the last two years, it was fairly evident that they were moving quite rapidly into this whole area here in Ontario.

Second, I think the ministry should also begin to consider halting some of the cross-ownerships that are going on either directly or through holding companies. I would think you could do that with grandfather provisions so that people who have cross-ownerships now could divest over the next number of years. I think what is happening is that there is concentration, it is not going away and we should be dealing with it.

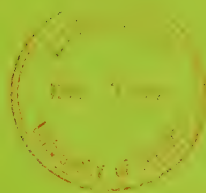
The Chairman: We are ready for the question on Miss Martel's amendment. All those in favour? All those opposed?

Motion negatived.

Section 39 agreed to.

The committee recessed at 1203.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

TUESDAY 3 OCTOBER 1989

Afternoon Sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Smith, E. Joan (London South L) for Mr Dietsch

Clerk: Mellor, Lynn

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Tappenden, Eric, Director, Business Regulation Branch, Business Practices
Division

Sorbara, Hon Gregory S., Minister of Consumer and Commercial Relations
(York Centre L)

Cooper, Jerry M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 3 October 1989

The committee resumed at 1415 in room 230.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
(continued)

CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order. When we adjourned this morning, we had completed section 39 of Bill 30. We move now to section 40.

Sections 40 through section 42, inclusive, agreed to.

Section 43:

The Chairman: Mr Haggerty moves that clause 43(1)(e) be amended by striking out "to determine this act and the regulations" in the first and second lines.

Mr Haggerty: The reason for the amendment is that the words to be struck out lack meaning in context. In other words, I suppose clause (e) should read, "Conduct such tests as reasonably necessary." Is that the correct way it should follow there?

The Chairman: The reason given here is it lacks meaning. Does anybody else want to comment on section 43?

Motion agreed to.

Section 43, as amended, agreed to.

Section 44:

The Chairman: Any comments or questions on section 44?

Mr Wildman: I have a question. I probably just missed it, but does it have the qualifications for inspectors anywhere in this, or is it going to be dealt with in the regulations?

Mr Tappenden: It was not intended that the statute or the regulations would deal with that. Normally, as I understand it, if there are some particular professional qualifications required, those would be appropriate to contain in things like the regulations, but where these people do not require any particular professional qualifications normally their qualifications would be contained in their position specification and be dealt with accordingly. Their authority, which sets out the things that they may and may not do, is clearly laid out in the statute, but their qualifications would just be contained in their job specification, as I understand it.

Mr Wildman: The previous section refers to the inspector consulting experts, and we do not define an expert either. It seems rather vague to me who these people are who are going to be doing these.

Mr Tappenden: They would be employees of the board reporting to the registrar. It is my understanding that none of the other, I guess, nine regulatory statutes that we have where inspectors are appointed to carry out certain functions under the acts prescribes the particular qualifications.

Mr Wildman: I could just be a friend of the registrar and get appointed, is that it?

Mr Tappenden: I would suggest that the job specification would say otherwise.

The Chairman: The registrar does not look impressed.

Mr Wildman: Give me some time; we will become friends.

Mr Wiseman: I guess you answered my question towards the last. I just wondered if in the past they had been funeral directors. I take it from the way you spoke to my colleague that they were not. They could be from any walk of life, as long as they passed the qualifications we are asking for. Is that true?

Mr Tappenden: Yes, that is certainly my understanding of inspections under all of the regulatory acts we administer. They tend to be people with varied experience and either they get their inspection expertise elsewhere and bring it to the job or they are trained on the job by the particular registrar or supervisor in the particulars of the act.

The Chairman: Any other comments on section 44?

Section 44 agreed to.

Section 45:

The Chairman: Mr Haggerty moves that clause 45(1)(a) of the bill be amended by striking out "registered" in the second line and inserting in lieu thereof "licensed."

Mr Haggerty: The reference should be to a person "licensed." They are talking about a person, I guess.

Motion agreed to.

Section 45, as amended, agreed to.

The Chairman: I have no other amendments in front of me. Perhaps you will stop me as I go through the sections if you want to comment on them.

Section 46:

Miss Martel: I would like to start with the section in terms of the power that is now given to the Lieutenant Governor in Council. I do not have section 33 of the old act in front of me but, in re-reading through the Board of Funeral Services submission, I noted it was concerned that it seemed there was a whole change in emphasis from the power of the board to determine a

great number of things now to the power of the Lieutenant Governor and I am wondering if that indeed is the case and why there is a shift in emphasis.

Mr Tappenden: This is a matter that has been discussed at considerable length with the members of the board and the registrar and their council. We have tried to make clear, both in the legislation and in our discussions, that we do not believe that the powers of the board have in any significant way been curtailed from what currently exists under the Funeral Services Act. What we have done is supplement those powers with powers of the person under the statute known as the director, and the director is the director of the consumer protection division under the Ministry of Consumer and Commercial Relations Act.

That is the official who has the ability to order an investigation where there is evidence of some wrongdoing under the statute, has the authority to freeze the assets of an establishment where there is some threat to the security of public funds—trust funds and so on—has the ability to prosecute and has those kinds of powers where the ministry, from an enforcement point of view, would be supplementing the authority of the board.

In the past the government has been criticized by many of the groups that made representation here last week for not effectively enforcing statutes in the bereavement sector. We felt it was essential to supplement the powers of the board with powers of the ministry where the board felt that assistance was necessary or where the public interest would dictate that the ministry be involved.

Miss Martel: If I can just go back to the relationship before this bill in terms of changing regulations or changing procedures under this particular piece of legislation, were most of the changes in procedure prompted by the funeral board and then it went to the ministry to get agreement to that, and is that now going to change with the ministry dictating what the changes are going to be and the board, in discussion, having to agree to them?

Mr Tappenden: Well, it is very rare in statutes for anyone to be able to write his own regulations. There are a few statutes where there are somewhat unique procedures whereby an agency, board or commission may pass bylaws which automatically become, by order in council, regulations, but those are the exceptions rather than the rule. Under the proposed act we are simply saying that regulations governing the operation of the board or anything else under the statute will be made by the Lieutenant Governor in Council, as is the norm. As one would expect, we will work very closely with the board in determining what those are, as we have tried to do.

Mr Wiseman: There are quite a few—from paragraph 5 through to about paragraph 13 we are talking about the compensation fund. Could you just give me an idea of how you see that working?

Mr Tappenden: The compensation fund is something that was previously in the former Bill 27, the Prepaid Funeral Services Act, which was introduced in 1987, and is really a remake of that provision. We have compensation funds under two other statutes, the Travel Industry Act and the Motor Vehicle Dealers Act, whereby businesses that are regulated under those acts pay into a compensation fund rather than putting up a \$5,000 bond. If there is a \$5,000 bond and there is a bankruptcy or a defalcation or something worth \$500,000 in consumer moneys, a \$5,000 bond does not go very far in protecting consumers. A compensation fund that is at the level, for example, in the travel act or the

Motor Vehicle Dealers Act of, I think, about \$3 million actually ends up costing businesses in many respects much less than a bond does to maintain, but offers the consumer much greater protection.

The compensation fund in the funeral bill here is designed really to have funeral establishments paying on a per-call basis, as it is known in the industry, or a per-disposition, per-body basis that they deal with, into a fund such that it would rise to a level of \$500,000 or \$1.5 million, and the money would be used and paid out to consumers who paid for a prepaid funeral or for any form of funeral service. Then if the establishment either goes bankrupt and is unable to provide those services, or there is a defalcation where someone uses trust money for other purposes and there is no money there to pay for the funeral, consumers would have access to compensation from this fund. The fund would also help to pay for a stepped-up inspection program to make sure that there is increased compliance with the act.

Mr Wiseman: Is it based on every funeral or just a prepaid funeral, so that they would be paying whatever their per diem is, \$10 or whatever it might be? You do not mind, I just wondered if—

Mr Tappenden: Just to preface my response, under the other two statutes that have compensation funds provided for all of the details of how the fund is established and operated are in regulation. It is intended, certainly in our discussions with industry and consumer groups and the board, that in this case it would be on a per-funeral basis, not on a per-prepaid-funeral basis.

Mr Wiseman: And until such time as the fund gets built up, say something happened and they did not have enough, like \$500,000, in the buildings, then would you cover that until such time as the fund—

Mr Tappenden: No. Again, the plan that has been negotiated and discussed with industry and with the board is that there would be, at the outset of the act taking effect, a purchase by the compensation fund board of a \$500,000 bond to cover all of these matters until a fund rose to such a level that the bond was no longer required.

Mr Wiseman: And then once it got to that \$1 million or \$1.5 million, they could cut back on the amount that they are paying into the fund to such time as it was drawn down?

Mr Tappenden: The regulations would provide for a premium holiday, in effect, that once the fund hit a certain level, and if it was maintained above that level, there would be a holiday on contributions.

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Hon Mr Sorbara: Just one other point as a matter of policy: The government has had very good experience with these sorts of funds, both in the travel industry and—another one, which Mr Tappenden did not mention, is the Ontario New Home Warranty Program, which in effect administers, by the authority of legislation, a compensation fund. It has perhaps one or two minor areas of weakness, some would say, but, through this period of dramatic volume of house construction in the province, has survived relatively well.

The point on policy that I want to make is that in regulating matters where the protection of the interests of the consumer is a paramount concern and one of the driving issues, our experience, the experience of the ministry

and my predecessors has been to rely on an industry-funded fund, which will be regulated, and funds become available under certain conditions. The experience, by and large, is that it has both provided compensation where it was needed and been strongly supported by consumer associations and industry groups themselves.

It also pulls all of the players in the industry together and creates a watchdog sort of effect within the industry, because those who manage the fund on behalf of the industry have a financial interest in making sure that those who are licensed to operate in the industry do not carry on business in a way that is going to result in a call upon the fund.

Mr Wildman: I understand one of the things the memorial societies, in dealing with the regulations, suggested was that there be a sliding scale to determine a cancellation fee, which would be based on the cost of the prepayment of the contract, and they suggested a ceiling of \$150. I am looking at the paragraphs of section 46 that deal with fees and I do not see any suggestion that there would be a sliding scale. Is it the intention of the government to establish such an approach to dealing with fees? I am looking at, say, paragraph 23 here. It just talks about fees.

Mr Tappenden: Just to perhaps clarify the issue of allowing a funeral establishment to deduct an administration fee on the cancellation of a prepaid contract, that is something that will be prescribed in regulations. The government has not yet made a determination of how best to calculate those fees and we will be looking very closely at the proposal which the Federation of Ontario Memorial Societies has put forward. There have been proposals by other groups, such as a straight percentage of the value of the contract and so on, but we will look closely at that. To my knowledge, the government has made no determination of what that scale or formula calculation will be in the regulations.

Mr Wildman: I have one other question on another matter. Perhaps the minister can tell me whether or not, either in the regulations or anywhere in the act, provision will be made to exempt aboriginal people living on reserves from this legislation. Or are they exempt already because they are under federal jurisdiction?

The Chairman: The legal counsel is going to help us out with that.

Mr Yurkow: In addressing Mr Wildman's query and the response, it is paragraph 7 that you will be looking at to collect moneys for the compensation fund. The authority, as set out, allows for amount only. As it currently stands, the ministry could not set out a percentage, for example, or a sliding scale. I think it is worth while drawing that to your attention.

Mr Wildman: That was the compensation fund, but that was not for a cancellation of a prepaid contract, as I understand it. Is that correct?

Mr Tappenden: That is correct. As I understand it, the provisions with respect to prepaid contracts, if I can just find the section in the act that deals with those, talk about an amount to be prescribed. It is subsection 34(3).

Mr Wildman: So we are back to the aboriginal people now, or are we still dealing with the fees? It does not matter to me; whichever you want to deal with.

Mr Yurkow: We will deal with the aboriginal peoples in a moment.

Mr Wildman: Okay.

Mr Tappenden: If I can just read subsection 34(3), it says, "If a prepaid contract is cancelled after 30 days of the entering into of the contract, the person paying under subsection 2 may deduct from the amount paid such fees as are prescribed." Then the regulation-making power says, "prescribing anything that is referred to in this act as being prescribed."

Mr Wildman: That is pretty wide.

Mr Tappenden: We would set out in regulation what those fees are. Whether it will be a percentage or an absolute amount or a sliding scale we have yet to determine.

Mr Wildman: Basically, the other question I raised was related to aboriginal people living on reserves.

Hon Mr Sorbara: The authority for such an exemption would be found in paragraph 46(1)20, which says, "exempting any person or thing or class of person or thing from the application of any provision of this act or the regulations and prescribing conditions for any exemption."

That would provide the government and the ministry with the power to provide for partial or full exemption from anything dealt with in the act, including matters relating to aboriginal peoples living on or off reserves, for that matter.

Mr Wildman: The reason I said on reserves was specifically that Indian reserves are federal land and they are under the jurisdiction of the federal government. My question really is, do we need an exemption if that is the case? I note that the Chiefs of Ontario indicated they wanted to have traditional aboriginal burials exempt from regulation under this act. I am not dealing with Indians off reserves; I am talking about people on reserves. If it is federal land, does this act apply?

Hon Mr Sorbara: Jerry Cooper is coming up to the microphone. I think probably he will be referring to some provisions in the Cemeteries Act as well.

My understanding—and Jerry can correct me if I am wrong—is that were a funeral establishment to be established and licensed on land that is reservation land, it would still come within the jurisdiction of the provincial government and the provincial government would have the constitutional authority and responsibility to regulate the activities of that funeral establishment.

Mr Cooper: Yes, that is my understanding. Provincial laws of general application would apply on reserves unless the matter was already regulated under the Indian Act. I am not familiar enough with the Indian Act to know whether they get into the issue of burial grounds. If they did, we would not have jurisdiction. Otherwise, the principle is that provincial laws of general application do apply.

Hon Mr Sorbara: I think the specific question you ask is about traditional burial rites of aboriginal peoples on reserves. There is the capacity under the clause I just quoted to exempt. I would not want to suggest that those exemptions would be automatic. One would want to examine what

activities were taking place and determine whether an exemption were appropriate and the exemption would be granted after an examination of the application for an exemption that a particular band might make on a particular reserve.

Mr Wildman: I was expecting that kind of a response, it is beyond the purview of this particular act, but it has obviously been a subject of some controversy between the first nations and provincial governments right across this country for some years that, if we do believe in Indian self-government and if the first nations sign treaties with the federal government, whether or not laws such as gambling laws and so on apply on reserves.

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That is a question that we cannot determine here, but I would think just offering an exemption for those who say provincial law does not apply, they would say that you are in fact saying it does and you are prepared to consider an exemption. I appreciate that, but I do not think it will meet the concerns of the Chiefs of Ontario.

Hon Mr Sorbara: I agree with you. We could probably spend an interesting, fascinating afternoon discussing issues relating to self-government. I think in a situation like this it is one of the places where the issue is joined and one understands that there is going to be a variety of perspectives on that.

I would just note one point, though. Without any position on self-government, you see in this act, for example in the area of embalming, that the act attempts to be expansive, to say, "Hold on a second; there's a whole group of people who do not have that as a tradition." This exemption also identifies the possibility that there are areas where we will want to exempt, identifying other traditions, other concerns that cannot be specifically collected and put into the act here. That may be a comment on self-government as well, or it may be an approach to self-government, or maybe it is just an accommodation of a variety of cultures that try to coexist on this piece of territory.

Mr Wiseman: I just wanted to go back to what Bud had there on the fees that may be returned to someone who prepays a funeral. For good public relations, some of the funeral directors I know do not charge anything, they give it all back. I wondered if when the regs come out there will be such a thing—if the people ask for it, they can charge up to the \$150 for administration fees but many of them do not. I just thought if you make it too rigid in there, some who have done it for good business practice and public relations may not give the full amount back in the future. That was a bit of concern if you write it too hard.

Hon Mr Sorbara: You raise an interesting point. When you put into regulation the requirement only to give back a percentage and the right to retain an administration fee, you may well be creating a general practice in the industry that abides by those minimum standards, but the matter is permissive and there is no prohibition against returning the entire fee, and indeed returning the entire payment and not deducting anything and indeed paying interest. It may be that one establishment or a group of establishments decides to market itself on the basis that they do not deduct. There is a wide variety of things that could occur.

I think, as between the risk of setting a standard where everyone deducts; as between that and the responsibility to ensure that the fee gets back less what may be deducted, the preference is for at least a minimum standard.

I note in the section that we just read, that is, subsection 34(3), the reference is, "may deduct from the amount paid such fees as are prescribed," not "must."

Mr Wiseman: I will not prolong this. My only concern is that in the regulations we do not go overboard, because it is a good public relations thing to give it all back, and as you say, some of them I know say, "If you do change your mind, you will get it all back." I think people may enter into an agreement like that a lot faster and it would be good for the funeral establishment and business in general.

Hon Mr Sorbara: "Going overboard" is an interesting choice of phrases. I am not sure that that comes within these regulations, although it may be an alternative.

Mr Wiseman: Sometimes in government we do that, you know.

Hon Mr Sorbara: Oh, we do. Sometimes in funeral services we do that.

Mr Wiseman: We have been known to do it.

Miss Martel: I have a question concerning regulation 31 that talks about the prohibition of advertising of funeral services or the prohibition of displaying funeral supplies to the public. I am wondering why we would be using the word "prohibiting" at all when we are talking about advertising, either in regard to price lists or the display of supplies.

Mr Tappenden: I think again that the context of this is that the Lieutenant Governor in Council has the power to make regulations which prohibit or govern. In its announcement of the proposals for the new bill, the government has indicated that it will remove, for example, the clause in the current Funeral Services Act which restricts funeral establishments from price advertising, with the notion that the more information the public has through advertising or other means, the more able it is to make an informed choice and decision. What we probably would do at the outset is set out some regulations governing the form and content of advertising and the display of funeral supplies to the public, such as ensuring that there is a full range of caskets from the lowest to the highest price and so on.

The word "prohibiting" is in there because if some form of advertising that is particularly misleading or distasteful does come up, then the government wants the ability to prohibit those forms of advertising rather than prohibiting advertising altogether. It is particular forms or content of advertising and likewise display.

The Chairman: On section 36—sorry, were you finished?

Miss Martel: If I can just go back to that, I am looking at section 27, which governs advertising as well.

Mr Tappenden: Sorry, which section?

Miss Martel: It is section 27 in the same bill, which talks about

making "false or misleading public representation." The concern I have is that when you start talking about prohibiting we are going to end up then disallowing some form of advertising which may in turn be price lists because the industry either lobbies so hard that it—

Mr Tappenden: Not a chance. Forgive me for saying that.

Miss Martel: I just wanted to be sure that "prohibiting" is not in there for that purpose later on.

The Chairman: In section 36, Mr Tappenden, what are you worried about there?

Mr Tappenden: It governs the availability and display of funeral services and funeral supplies. A couple of things that might fall under there are with respect to ensuring that every funeral establishment offers a basic funeral service; that is, making available to the public the full range of services and not just high-priced services.

I am sorry, did I hit on the right section, 36?

The Chairman: Yes.

Mr Tappenden: Also, in display of funeral services and funeral supplies making sure that they are presented in a way that is not offensive and also covers the full range of choices a consumer has.

The Chairman: I do not know how you would write this into the bill. I raised very briefly last week about the practice of when the caskets are displayed you will have a low-priced casket and then an enormous jump to the next-priced casket, which is really saying to people, "You wouldn't want your dearly departed to be in this heap of junk, would you, even with cremation?" I do not know how you would write that into the regulations. I have seen that happen.

Mr Tappenden: Just to comment on that, there are two ways to get at that. One is to try to prescribe in some way in regulations what a full range of available caskets means, and that may have its limitations in terms of how specific one can get. The other is really dealing with the area of professional misconduct, where someone may be charged with excessive pricing or other forms of professional misconduct and there can perhaps be some consideration given under that overall notion of professional misconduct to not adequately providing a choice of supplies and services.

The Chairman: It is a hard one, because you could have a very wide range, but if you have that huge gap between the lowest and the highest—

Mr Tappenden: Yes.

Mr Lupusella: It is a very difficult procedure. I know that we are going to be faced with problems. One of the major concerns is the law enforcement process of these regulations. I know under the old act we did not have enough inspectors to go across Ontario to inspect funeral homes, books in the funeral homes, price range, complaints and everything. Maybe you are able to tell us what kind of law enforcement process we have in relation to the implementation of this act and the regulations as well under the new bill.

Mr Tappenden: Yes. Certainly a comment that we have heard across this whole sector is that the government and the board need to put more resources and emphasis on our ability to enforce the statutes. The Board of Funeral Services has recently increased the number of inspectors it employs out of the licensing fees that come to the board. In addition, under this statute the compensation fund will have income, as our other compensation funds do, which is used to pay for a stepped-up inspection program particularly zeroing in on the financial aspects. Third, as I mentioned previously, under the Ministry of Consumer and Commercial Relations Act the bill provides for the director of the ministry to be involved in the enforcement process where required. So in three ways I think we have stepped up the enforcement resources and practices and we hope that will be sufficient.

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The Chairman: Any other comments?

Miss Martel: I think that it should be raised here, although we may want to deal with it in another section of the act, and that concerns some of the health and safety questions that were raised, in particular by the Ontario Funeral Service Association. They had talked about some of the existing legislation which they wanted continued and also made a further recommendation concerning the disposition and transportation of a human body out of Ontario or into Ontario. I wondering if the ministry is going to be addressing those concerns and where they are going to be addressed.

Mr Tappenden: The Ministry of Consumer and Commercial Relations obviously does not employ a lot of medical experts. We have relied in large part on advice from within the funeral community, from the Board of Funeral Services and from experts in the Ministry of Health. We have gone as far afield as talking to people at the Atlanta Centres for Disease Control. Perhaps I can tell you about some of the information that we have received back.

I must preface this by saying that the Ministry of Consumer and Consumer Relations does not in any way want to underestimate the importance of the health-related issues to the industry and to consumers. We know the health-related issues are very important. However, we believe that the health-related aspects of the industry and of the provision of these services are adequately covered by other statutes, such as the Health Protection and Promotion Act and the Environmental Protection Act, and the kinds of guidelines that exist from groups like the board, the Atlanta Centres for Disease Control, the Ministry of Health and the Ontario Funeral Service Association itself.

Perhaps I can refer to some of these. Forgive me if I just access a few of these pieces of paper. If I can refer to the Health Protection and Promotion Act, regulation 292/84, section 7, talks about the disposal of corpses. It says, "Sections 8, 9 and 10 apply to the corpse of a person who died of or while isolated for, (a) anthrax," and it goes on to list approximately eight diseases, including smallpox.

Section 8 talks about, "As soon as possible after death occurs, the person having custody of a corpse referred to in section 7 shall place it or cause it to be placed in a coffin of sound construction."

Subsection 2 says, "Where a deceased person was infected with smallpox or anthrax, the coffin referred to in subsection 1 shall be hermetically sealed."

Section 8 talks about: "As soon as possible after death occurs, the person having custody of a corpse referred to in section 7 shall place it or cause it to be placed in a coffin of sound construction."

Subsection 2 says: "Where a deceased person was infected with smallpox or anthrax, the coffin referred to in subsection 1 shall be hermetically sealed." It goes on prescribe procedures for dealing with bodies where the person died of one of those communicable diseases.

Section 9 states that, "The medical officer of health may restrict the attendance of persons at the funeral of a corpse referred to in section 7."

Section 10 talks about transporting corpses in a hermetically sealed and strong coffin or container, and section 11 says, "Except as provided in section 6, a reference in this regulation to the medical officer of health means..." and goes on.

Those are the kinds of provisions in the Health Protection and Promotion Act that we feel deal adequately with some of the health-related issues. I should go on to say that we have talked to the Ministry of Health and have on our files a memorandum from Dr Richard Shabas, the chief medical officer of health and director of the public health branch of the Ministry of Health, which concludes in part:

"The need for embalming of bodies is not a public health issue." It goes on to say, "Diseases such as hepatitis B and AIDS...are a risk to embalmers if remains are not handled in accordance with recommended safety procedures. However, a safe and effective vaccine against hepatitis B is available at moderate cost. This area of concern is more appropriately addressed from the occupational health point of view" rather than a public health statute.

We also have confirmation from the Ministry of Health that it will continue to conduct public health inspections and that it will ensure that local medical officers of health conduct public health inspections of funeral establishments, and the Board of Funeral Services inspectors will also take into account the health-related aspects in their inspections.

We have on our files a Ministry of Health position paper from May 1988 which concludes that embalming of bodies should not be a requirement for transportation of bodies in or out of the province. The paper also notes that "the AIDS virus dies within hours of death" and that "there is no health risk posed by either a body with AIDS or by the process of embalming a body with AIDS using normal sanitary procedures."

We have on file considerable material from the Atlanta Centers for Disease Control which lays out recommended sanitary practices for "morticians" in dealing with dead bodies of AIDS victims. We also have on file a document which was prepared by the Ontario Funeral Services Association and endorsed by the Board of Funeral Services and the Ministry of Health. Among other things, the guidelines state: "AIDS is not as infectious as many people fear. Medical authorities advise us that AIDS is less infectious than...hepatitis B or Jackob-Creutzfeldt Disease...In the last five years of treating AIDS patients, no health care worker has developed AIDS from their care of patients." The guidelines set out normal sanitary procedures for funeral directors in dealing with infectious diseases and set out alternatives to funeral directors who do not wish to embalm those bodies.

Mr Wildman: Excuse me. What is the source of that?

Mr Tappenden: Those are the Ontario Funeral Services Association's own guidelines for funeral directors on how to handle AIDS and other infectious diseases.

Mr Wildman: That comment about no health care worker having contracted AIDS through care of patients, frankly, is factually incorrect.

Mr Wiseman: The Atlanta centre said it had a number on 60 Minutes or whatever it was.

Mr Tappenden: To add to that, I do not know about the publication date of this, but the guidelines go on to mention that there were three health care workers who, to the knowledge of the Atlanta centre, had been in contact with the disease and had contracted the antibodies but had not yet contracted the disease AIDS or its symptoms.

Mr Wildman: I see.

Mr Tappenden: I guess what I am really trying to say is that we understand and know the importance of the health-related aspects of the funeral business. However, we feel that just as the environmental considerations cannot all be captured in this statute, they are captured in the Environmental Protection Act. The health aspects are adequately covered in the Health Protection and Promotion Act and the variety of guidelines which bodies including the OFSA themselves have put out. There is no need to add significantly to the provisions of Bill 30. We have had introduced an amendment to add the term "hygienic practices" so that those can be contained in regulation.

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Mr Wiseman: It really bugs me that one of the worst diseases we have had in our society in the last number of years is AIDS. Everybody seems to stay away from it like the plague, yet if you get it and you develop it, you are a dead duck. I know people who have to work with AIDS patients who have refused to work with AIDS patients because they may contract it in some way and take it home to their families and everything, but the one who gets stuck and gets it in the neck is the one who has to work with them. I have known one who has lost a job over that.

The funeral directors have asked us----they cremate people, and there is a law out there that certain cases of communicable diseases have to be cremated. We are not doing anything any differently from what is already there. We are just adding one of the worst, dreaded diseases. I do not know whether the rest of you feel that way, but I think it is one of the worst diseases that has faced us in a long time. You can get needles against certain of the diseases you mentioned, but you sure as heck cannot yet get anything if you have contracted AIDS or you are AIDS positive. The sooner we grasp this, the better.

A bill like this probably will not come back into the Legislature for quite a while. Even in "the Lieutenant Governor may make regulations," even if there was a part in there that said the cabinet could bring in health regulations as it saw fit---because some of that information that you have, to be honest with you, is contrary as the devil to what was on a program that a lot of my riding people saw on a Sunday night about two weeks ago, where they said they had done only a small group of health professions workers and 17 of them had died. This lady doctor will not touch a person to operate unless he or she has the expensive AIDS test. The medical profession is trying to put

her out, I guess, because she is not carrying out her oath of practice or something, but you can see her case.

It seems to be contrary to what some of the funeral directors told us when they came last week. They felt that any body coming into Ontario, for the protection of the people who handle it, from the baggage carriers to people taking it off aircraft, if there happened to be any leakage, I think is what they said, and so on of the AIDS virus must be embalmed. I asked last week that we take precautions in hospitals to make sure that certain parts, blood or parts or whatever, be destroyed in a different way than they are presently required to be destroyed, in a morgue or at a funeral director's, and none of that seems to be covered. We are supposed to bury our heads in the sand and say, "This thing will go away," and it will not.

I could not see any reason why we could not say that any body coming into Ontario must be embalmed at the other end before we receive it, as a protection to our funeral directors or anybody handling that body, but we have not done that either. It bothers me.

Mr Tappenden: Can I respond to that? I did not mean in any of my remarks, again, to try to minimize the importance of dealing with AIDS and hepatitis B and other infectious diseases, either in terms of protection of the public health or in terms of occupational health and safety.

In the Funeral Directors and Establishments Act, the minister indicated in his opening remarks that paragraph 29 of subsection 46(1), which says that regulations may be made "governing standards of practice and operation for licensees" will be expanded by a proposed amendment to say "governing standards of practice, including hygienic practices and operation for licensees."

While it is technically not necessary to do that, so that there is no misunderstanding that we want very much to address those health-related issues, this act states very clearly that in order to be licensed under this act, you must also obey and operate in accordance with every other statute, including the Health Protection and Promotion Act, including the Environmental Protection Act. It is our intention to propose a regulation to the government which will insist that bodies being transported over any distance at all be in a solid container which is hermetically sealed, meaning leak-proof, so that there is no leakage of bodily fluids and no risk to either those handling the body or the public.

Many carriers—in fact, I believe all carriers, rail, air or otherwise—have similar requirements, that any body being transported be either embalmed or carried in a sealed container. Embalming in and of itself, the Ministry of Health has concluded—and I have met with people like Dr Jackie Carlson, the head of epidemiology there who deals with these diseases in the public health area, who has said there is no public health risk provided these normal precautions and the normal sanitary precautions are taken, wearing double gloves and aprons and so on. Providing the aspects of the environmental protection legislation are adhered to, there should be no occupational health risk. However, those occupational health risks ought to be dealt with under the Occupational Health and Safety Act.

There is just one other point, which you did raise last week and which I did want to respond to, that has to do with the disposal by funeral establishments of body fluids, parts and related materials which contain or

have been exposed to infectious diseases. Regulation 309 under the Environmental Protection Act requires funeral establishments to dispose of these fluids and materials in a particular way and requires every funeral establishment to register with the Ministry of the Environment as a generator of hazardous waste.

In speaking with the Ministry of the Environment just last week, after you asked the question, I was assured by officials there that there is an extremely high compliance rate with the registry provisions. Funeral establishments, as a result of extensive meetings last summer, may dispose of those wastes in one of two ways, either by taking the fluids or materials to a licensed hospital incinerator or by having one of five certified carrier companies remove the waste to an incinerator facility in the province. Incineration renders the pathological fluids or materials nonhazardous, and the Ministry of the Environment informs us that it is satisfied that there is not a compliance problem in the funeral sector any longer with respect to this matter.

Mr Wiseman: I understand that is not done all the time. There may be some who are doing that, but I understand they are not all doing it because it is not a requirement of the law that they do that.

Mr Tappenden: Excuse me. Just for clarification, Mr Wiseman---

Mr Wiseman: If it is, then they are not all doing it, I am sure.

Mr Tappenden: The figures I have are that all but three funeral establishments in the province, of the 526 that there are, are indeed registered as generators of hazardous wastes and that they are obliged by law to dispose of hazardous wastes in that way.

Mr Wiseman: That is different.

The Chairman: Perhaps we could come back to you. There are a number of people.

Mr Wiseman: Yes, okay.

Mr Tatham: Listening to this and having spoken to other people, it seems to me that on this matter of AIDS, the more you get involved with it, if there is embalming, there would seem to be more danger. I would think that if you did not embalm, you would have less risk. I would like a comment from the gentleman there, if that is possible.

The Chairman: The question was addressed to Mr Tappenden.

Mr Tappenden: I am sorry, Mr Tatham, please forgive me.

Mr Tatham: My understanding on this matter of AIDS is that the less you handle the body, the less there is a chance of getting involved. If you start to do embalming, would you not have more problems with getting the AIDS disease?

Mr Tappenden: Yes, you raise a good point. The advice that we have been given by medical experts, both at the Centers for Disease Control in Atlanta and our own Ministry of Health is that the biggest threat to a funeral director in dealing with a body where the person had AIDS is indeed in the embalming process. If there is no embalming, there is much less of a threat to the funeral director or to those handling the body.

I have to stress again that with respect to AIDS, while it is a very serious concern for health care workers, the best medical advice that we have been able to obtain says that the AIDS virus dies within hours of the death of the person. Certainly after 24 hours of the person's death, the AIDS virus simply does not exist in the body.

Mr Haggerty: I have an amendment to move to section 46.

The Chairman: Dealing with this?

Mr Haggerty: Dealing with paragraph 46(1)33.

The Chairman: Mrs LeBourdais, do you want to wait for that or do you want to make a point now?

Mr Haggerty: This may clear the air, I think, on some of the questions you raised here.

Mrs LeBourdais: I really just wanted to reiterate the point about the AIDS virus dying approximately a few hours after death, plus the fact that from anything I have read, hepatitis B is still more contagious than AIDS. It is still our ignorance about and the fear of AIDS that is really prompting us to almost zero in on this disease rather than some of the others.

Mr Wiseman: Could I just finish on that before we go on? On the embalming part, we had a presentation by members of the Jewish community that they could not be buried if they were cremated or embalmed. I wondered if that was the reason we were reluctant to bring in embalming from outside the province. Maybe this is unkind, but the people from Jewish community made a case that they could not be buried in the traditional way if they were embalmed. You went on to say that certain carriers say that the body must be embalmed or in a sealed case or this sort of thing. I wondered if the reason that we did not grant what the funeral directors had asked for—to allow bodies to come in—was because of representation and lobbying from the Jewish community.

Mr Tappenden: Yes, the notion of having two classes of funeral directors who can embalm or not embalm and the notion of not requiring embalming for the transportation of bodies was in part a response to those many cultural and religious groups which not only prefer not to embalm but which, by their faith, find it quite repugnant. If in fact there are no public or occupational health reasons that embalming should be considered mandatory, then the government felt there was no reason to unduly offend these groups which have very different practices from other groups in society.

I note that carrier restrictions is an either/or. If you embalm the body, then the sealed container is not required, but if you have the body in a sealed container, then embalming is not necessary. That is my understanding of the carrier regulations.

The Chairman: Again, I am sorry, Mr Haggerty, for that delay.

Mr Haggerty: I have an amendment to move here dealing with paragraph 46(1)33. It is in reference to what the minister had indicated before about hygienic practices and the Occupational Health and Safety Act. The amendment reads this, that paragraph 46(1)33 be amended by adding "including hygienic practices" following "practices" in the first line.

Mr Wildman: Sorry, what was that?

Mr Chairman: Do you want to repeat that, Mr Haggerty?

Mr Haggerty: That paragraph 46(1)33 be amended by adding "including hygienic practices" following "practices" in the first line, so you have it reading "governing the equipment, hygienic practices" and following that in the first line.

The Chairman: So, Mr Wildman, it would read "governing the equipment and hygienic practices with respect to"—

Mr Haggerty: "Including hygienic practices" following "practices" in the first line.

Mr Wildman: "Governing the equipment and hygienic practices."

Mr Haggerty: "Including."

Mr Wildman: Why do you not just read the whole thing, Ray?

Mr Haggerty: The amendment reads this, that paragraph 46(1)33 be amended by adding "including hygienic practices" following "practices" in the first line.

Mr Wildman: Oh, I see.

The Chairman: All right? Is that clear? Any comments, questions? Ready for the question on Mr Haggerty's amendment?

Motion agreed to.

Any other comments on section 46?

Section 46, as amended, agreed to.

Section 47 and 48 agreed to.

Section 49:

Miss Martel: I have two questions to raise, Mr Chairman, that are not included in the legislation. I do not know if you want me to wait till we finish section 55.

Mr Wildman: If the questions are not adequately answered, we may have to move amendments which will add new sections.

The Chairman: All right. Why don't you go ahead and raise it?

Miss Martel: All right. There are two. The first, if I may, Mr Tappenden, concerns actually Bill 31. It was section 27, which talked about permitting the registrar to receive price lists from establishments and to disallow any price which seemed to be excessive or higher than the current market value for supplies and services, etc. Because I do not think there is anything like it in Bill 30, I am wondering why in fact we are not setting up a similar procedure wherein we can receive lists of prices of funeral services, etc, and start to regulate and look at some of those.

Mr Tappenden: The issue of price regulation has been very much considered as a part of this review of the statutes and discussed at length with the interested groups. In part, it comes out of the history of these two sectors. The funeral sector traditionally has been a small business sector, characterized by family-owned businesses which are for-profit businesses. The cemeteries sector has traditionally been very much like a public utility, where cemeteries exist in a community and serve the public on a not-for-profit basis.

As a result of that, prices in the cemeteries sector have traditionally been regulated in a similar way to that of public utilities—that is, they are approved by a regulatory body—whereas pricing in the funeral sector has traditionally not been regulated, because it has been an entrepreneurial or business endeavour. We looked at the issue, of course, from the point of view of trying to create a level playing field while still recognizing the differences.

In the funeral sector, the check or balance in the system, rather than having detailed price filings which are approved or at least have the potential to be denied by a registrar, is in the matter of professional misconduct dealing with excessive pricing. I think if you made a review of all of the complaints that are filed with the Board of Funeral Services in the course of the year, you would find that many of them deal with complaints of excessive pricing, but it is done on a one-off basis rather than a preapproval of prices by the registrar or the board.

I think the last comment I would make is that it is probably easier to do price regulation in the cemeteries sector, because of the nature of the services and goods provided, than it is in the funeral sector where prices change much more based on supply and market conditions.

1520

Miss Martel: If I may, I appreciate the historical significance, but there are now a number of commercial-owned cemeteries, not just nonprofit, so we are dealing with a sector in there that is a business, that is looking for profits as well, and there is some regulation of what is going on. I appreciate that you have said there is a section under this act, under undue practices or—I forget the section—

Mr Tappenden: Professional misconduct.

Miss Martel: Okay—where that can be dealt with, but I am wondering what kind of system the board or the registrar herself has in place so that they know what kind of ranges are in existence and whether or not these are excessive. What kinds of standards are there in place to judge by? I think we should be moving to something like what we have in Bill 31 in particular in Bill 30 to start to deal with prices which we heard even last week were becoming excessive.

Mr Tappenden: When I was suggesting that there were historical differences that resulted in what we have today, I guess I was suggesting that the more onerous of the two forms is clearly what exists under the Cemeteries Act, that preapproval of prices, in effect, or prefiling of prices by a cemetery is a more onerous burden. The commercial cemeteries have certainly expressed to us that they find that burdensome, but in order to create a level playing field between types of cemeteries, we felt that we could not have different rules for commercial cemeteries versus noncommercial cemeteries. I

guess I was really trying to justify that we have more onerous requirements on cemeteries than we do for funeral directors.

It is really a question of, do you control prices before they can be offered to the public or do you control prices after they are offered to the public? I believe it is the position of the board, including the lay people on the board, that there is adequate protection for them to consider any complaints of excessive pricing and deal with any consumer complaints accordingly.

Although I do not have detailed knowledge of how the board does that, it is my understanding that it does so through comparison in a geographic area with similar funeral establishments and similar services and products and also has the ability to request a cost justification. If someone charges \$3,000 for a casket, or \$4,000 for a funeral service, they will compare that in a geographic area with competitors and they may ask for a cost-based justification of those charges in determining whether or not it is excessive.

The Chairman: I am uneasy about carrying on this debate when we have neither a section of the bill nor an amendment before us to address our comments to. If you want to tidy this up, that is fine, but I do not think we should carry on, because it is really out of order.

Mr Wildman: All right, I will move an amendment.

The Chairman: If it is to section---

Mr Wildman: No, I do not know what section it should go in. It is a new section, so it is not an amendment to a section. It would be adding a section and I am not sure what number it should be.

The Chairman: Well, since it has to go in between sections 49 and 55, may I suggest that you might want to create a new section 50, for example? It will not relate to one of those sections, will it?

Mr Wildman: No. Well, all right.

Miss Martel: I will deal with another issue?

The Chairman: As long as it does not go beyond the scope of the bill.

Miss Martel: No, I do not think it does.

Mr Wildman: If he wants me to move an amendment, I am going to move an amendment.

Miss Martel: If my colleague can prepare that, could we go on, because I have a second issue that I would like to deal with, and I will give him time to finish that?

The Chairman: We will stand down the section of the bill that does not exist.

Miss Martel: Thank you. This is another section of the bill that does not exist. It concerns the question of the advisory committee which we dealt with a bit yesterday, which does not appear, so I would like to move an amendment concerning the advisory committee and then speak to it.

The Chairman: Are you creating a new--

Mr Wildman: Yes, a new section.

Miss Martel: Yes, a new section, not an amendment; I apologize for the use of words.

The Chairman: All right. Try.

Miss Martel: I move that a permanent advisory committee be established to advise the minister on matters relating to the bereavement industry and that this committee be made up of representatives from the industry, from seniors' groups, from memorial societies, from the Consumers' Association of Canada, from heritage organizations and from Ontario native organizations.

The Chairman: Legal counsel has advised that this could be section 49—we already have clauses (a), (b) and (c).

Mr Yurkow: No, no, section 49a.

Clerk of the Committee: Section 49a as opposed to section 49 or section 50.

The Chairman: Oh, I see, okay.

Clerk of the Committee: A new section 49a.

The Chairman: Okay. Have you actually formally moved it? I am sorry. I was a bit distracted there.

Miss Martel: Yes.

The Chairman: All right. Do you wish to speak further to it now?

Miss Martel: Yes, I do. I know that we have been told that in fact this is an intent of the minister, to create this particular advisory committee. I guess I am not particularly convinced that, without its appearing somewhere in the bill, it may come to pass or that it may not be created to sit for only a certain amount of time and then not sit again.

Given some of the concerns that we have heard over the past week in terms of some of the practices that are going on within the bereavement industry, although I recognize these bills are an attempt to clean some of that up, there are problems that are occurring and we do not have a committee that has a majority of lay people to deal with some of the overall problems in the industry. We talked about the Board of Funeral Services yesterday. We could not get a majority of consumers on it, so that board will effectively regulate itself.

I think if it is the minister's intent that we have a committee, that committee should be a permanent committee to advise him with respect to problems going on in the industry. It should not be something that can come and go with the change of minister or the whim of the government, etc, because I think some of the things that are occurring are so important they should be dealt with on an ongoing basis.

Given that we have a commitment from the minister that this committee

will be established, I move that we actually put it into the legislation so that it becomes a permanent body that will have representation from all interested parties to deal with some of the questions in this industry.

The Chairman: Are there any other comments or questions on Miss Martel's proposed amendment?

Mr Haggerty: I have some difficulty following it. Although the ministry said that the committee would continue under that basis—you know, a policy of the ministry—I do not think the minister would want to confirm it in the act. There is nothing there that says we can structure it, in a sense, to say in the act where it would follow through. It is a normal process, I guess, within the Ministry of Consumer and Commercial Relations that the ministry has dialogue with a number of interested groups dealing with a number of different projects or legislative reviews that are being continued through the ministry now. It is a good rapport between the interested bodies, but we are not prepared to move into the area of putting it into legislation. It is a continuing dialogue and I think it is done on more of an agreement just among interested groups, to say: "Yes, we'll sit down and discuss issues with you." I think this is a good policy of the government; in particular, of the ministry.

The Chairman: Is the committee ready for the question on Miss Martel's amendment?

Mr Runciman: Can we have it read again, please?

The Chairman: Miss Martel moves that a permanent advisory committee be established to advise the minister on matters relating to the bereavement industry and that this committee be made up of representatives from the industry, from seniors groups, from memorial societies, from the Consumers' Association of Canada, from heritage organizations and from Ontario native organizations.

That is the amendment.

Mr Runciman: I guess I would not have any trouble supporting it. I would prefer if the mover might not be totally restrictive but would perhaps leave the option open for the ministry to include other interested or appropriate individuals and groups.

Miss Martel: I would be willing to put on it that any other group that would have a particular interest—I tried to cover as many as I thought were included here.

Mr Chairman, if I just may respond to the comment made on the government side, I think we saw in this legislation that there was good discussion among most groups. However, the heritage organizations were left out and were feeling that particular problem of not having any input on their side into this bill.

1530

Second, I would submit that dialogue is really dependent on the minister and some of the ministry officials in place at the time and that ongoing rapport may be not as beneficial or ongoing, depending on whom you have in charge and his or her particular relations with some of those groups. So in order to avoid the problem of the advisory committee's maybe being here today

and gone tomorrow if the government changed or the minister changed, I would like to see it set in place in a permanent way to deal with the problems that are ongoing in this particular industry.

The Chairman: Is the proposed amendment clear?

All those in favour of Miss Martel's amendment please indicate.

Opposed?

Motion negatived.

The Chairman: Mr Wildman, on which section?

Mr Wildman: This is a new section.

The Chairman: Mr Wildman moves that the bill be amended by adding section 49a to read as follows:

"The registrar require that prices for funeral services and supplies be filed with the registrar and that, upon receiving a price list, the registrar may disallow, within 30 days after the list is filed, any price that, in the opinion of the registrar, is excessive or significantly higher than current market prices within the applicable area."

That wording would do justice to legal counsel.

Miss Martel: He stole it out of the other act.

Mr Wildman: I copied it from the other bill.

The Chairman: Do you wish to speak to your amendment?

Mr Wildman: I think it is clear. The purpose is to ensure that we are dealing with prices before the fact, rather than leaving the onus on the consumer who, for whatever reason, may feel aggrieved in that he or she has been overcharged to file a complaint. The onus then is on the industry and the registrar to deal with prices in the first instance, rather than waiting until after and leaving it to the consumer to file a complaint..

It brings this bill in line with the companion piece of legislation which this committee will be dealing with in that it is essentially copied from the section in the other bill, which would follow this procedure in dealing with prices for cemetery services and grave plots. I think that I have paid tribute to the drafters of this legislation by following their wording and their purpose. I think the government should accept that what they think is a good idea for cemeteries should also be applied to the other sections of the industry. I simply am helping the government to expand its regulatory powers.

The Chairman: Is the amendment carried? Ready for the question?

Mr Runciman: No. I think I had better offer a few comments on this one. I have some difficulty with it. I am not surprised that Bud is making this kind of motion. Bud wants to nationalize everything that moves or, in this case, does not move. Where do you stop with these things in terms of price regulation? What about hamburgers or cars? I just have a great deal of difficulty with this.

The Chairman: He is nodding in agreement.

Mr Runciman: I know. I just do not think it is appropriate. I think the ministry representative explained the situation quite well and it seems to me that the act, as currently worded, is affording appropriate protection.

The Chairman: Your support is slipping away.

Mr Tatham: I certainly understand the background and why the motion is put forward, but I would think that as long as a person knows exactly what he or she has the opportunity of purchasing, that makes it the choice of the individual who is buying the service. I think that is the main thing to do because then, if you want X, Y or Z, you go ahead and do that with the full knowledge of what the costs are. I think that is what should be done. We should allow the person to have the choice of the numbers based upon public fact, but I cannot support something where we are going to tell them what they should be paying.

The Chairman: I just would like to pay tribute to Mr Runciman for giving an ideological tone to the debate.

Mr Wildman: I am tempted to apologize to the committee for taking such a moderate approach in that indeed I could have, I suppose, in ideological fervour, suggested nationalization, but I chose rather the regulatory, reformist, gradualist approach. I think it is most reasonable and I hope that we would all be prepared to protect the consumer against those very few funeral directors and members of the industry who might not fulfil the responsibility as as I am sure the vast majority do.

The Chairman: I think we had better vote on this now.

Mr Haggerty: Just speaking on the motion put forth by the member, looking at it very closely we find it rather difficult on this side to accept the proposed amendment. I think the whole intent of the regulation is consumer protection and competition still remains within the context of the bill. For us to step in with an intervention, you might say, into the marketplace is just like saying, "Perhaps the government should be stepping in and freezing all wages again," and I would not want to see that happen.

Mr Wildman: I do not know what wages the member is referring to, unless it is the wages of sin—

Mr Tatham: It is.

Mr Wildman: —but I would anticipate, after hearing Mr Haggerty's most cogent argument, that one of the amendments we will be seeing to Bill 31 when we get to it is to strike down that section I copied.

The Chairman: Can we vote on Mr Wildman's amendment? All those in favour of Mr Wildman's amendment? All those opposed?

Motion negatived.

Section 49 agreed to.

Sections 50 to 55, inclusive, agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

The Chairman: Thank you very much, committee members. That completes deliberations on Bill 30, which was much easier than the last Bill 30 that went through the assembly, which was separate funding. Is the committee prepared to move right into Bill 31 at almost breakneck speed?

Interjections.

The Chairman: I was simply making sure the committee is prepared to move to Bill 31 now and get a start on that. All right. There are some amendments being distributed which were not previously distributed.

Mr Wildman: You mean in addition to the ones we already have?

The Chairman: In addition. Absolutely.

Mrs Stoner: Will we be finished today by four o'clock?

The Chairman: Yes, we finish at four o'clock. I think we are moving along nicely.

Mrs E. J. Smith: Do not stop the momentum. I want to have a productive afternoon while I am here.

1540

The Chairman: While we are getting the papers shuffled around here, members who are going to be here on Thursday might want to think before that day about the last item on our agenda, which is future business of the committee. When the Legislature comes back this committee will be expected to do something and it is a question of whether it is handed to us or whether as a committee we stake out some preferences. It was agreed before the House adjourned that the last item of business when we complete these bills would be the work of the committee when the Legislature resumes.

Mrs E. J. Smith: This came up for some discussion—I do not know whether it was about this particular committee or others—because for the members of my caucus there is a considerable change in membership due to the shuffle of parliamentary assistants. I think at that time you may find there is some concern that the new members should be involved in that discussion rather than the old.

The Chairman: That is a good point, so we may have an abbreviated meeting.

Mr Wildman: Are you suggesting that we can leave it until next week?

Mrs E. J. Smith: There were three committees that were in clause-by-clause where the parliamentary assistant appointments were deliberately held back until the end of the clause-by-clause. It has confused the issue of membership, so it gets completed at that point.

Mr Wildman: Okay, so next week would be better?

Mrs E. J. Smith: Yes, thank you. I appreciate that consideration.

The Chairman: Is the committee ready for Bill 31?

Mrs LeBourdais: We are raring to go.

The Chairman: This is Bill 31, An Act to revise the Cemeteries Act. We are here to proceed through it clause-by-clause, starting with section 1. There is an amendment.

Section 1:

The Chairman: Mr Haggerty moves that the definition of "burial site" in section 1 of the bill be amended by adding at the end thereof, "in accordance with the act or a predecessor of this act."

Mr Haggerty: The purpose of the amendment is that Indian bands have requested that "approved" in the definition be modified. Burial sites may have been approved, but not in accordance with the Cemeteries Act.

Mr Tappenden: In our quite extensive consultation with aboriginal groups, including the Chiefs of Ontario, they have requested several changes to the language of the bill, language that they felt in some cases was somewhat patronizing or paternalistic.

Their point here was that just because one of their burial grounds had not been approved by our government did not mean it had not been approved. What they really wanted was to clarify that this really meant in accordance with the act or a predecessor of this act.

Mr Wildman: I have some questions with regard to the definition, but not specifically with regard to the amendment.

The Chairman: Is it the definition of "burial site?"

Mr Wildman: Yes.

The Chairman: Why do you not go ahead?

Mr Wildman: In regard to the whole issue of archaeological interest in burial sites and also just the question of the discovery of burial sites that have not been known about before, does this mean it has to be complete skeletal remains or does it mean that it could be one bone in order for it to be a burial site under this definition?

Mr Tappenden: If I can respond to that, the definition of "burial site" refers to human remains and the definition of "human remains" means "a dead human body and includes a cremated human body," so cremated remains clearly could also constitute a burial site. Given that cremation is a relatively new thing in North American terms, there are not a lot of burial sites where we discover cremated human remains.

There are many burial sites that are discovered. We discover in this province an average of about 30 in a year, 90 per cent of which are native in origin. If in fact there are fully articulated skeletal remains, as the archaeologists would say, and it is clear that those remains were deposited in that site for the purposes of burial or interment, then it is clear that that was a burial site. If there is one bone found and it is clear that that bone was brought to that site in the process of moving fill in from a site 20 miles away, then it is probably clear that that was not a burial site. Everything else in between that requires some expert advice to determine whether or not the remains that were found constitute intentional interment of a dead human

body.

For example, if two thirds of skeletal remains are found in a particular site—they may be scattered, they may be all mixed up, but there are bones missing—it could be that on the basis of some archaeological advice or advice from another professional it was clear that those bodies were buried there and through erosion or animals or vandalism or some other reason some of the bones have been taken away but clearly that was the burial site. Everything in between those two extremes is really a matter for us to get advice on in each individual case.

Mr Wildman: That is what my concern really related to, archaeological sites. You may have a site that was an accepted burial ground 10,000 years ago, according to ancient rites, but subsequently has been disturbed by natural events or by vandalism or whatever. It may have historic and archaeological significance which may lead to the suggestion that this site be excavated and perhaps the remains transported elsewhere for further study, yet when we are talking about the first nations they might have considerable objection to this kind of activity being carried on on what they consider to be sacred ground.

Mr Tappenden: In a nutshell, what you have described is one of the main reasons that we have defined burial site differently than cemetery. Under the current Cemeteries Act, if human remains are discovered, that site immediately becomes a cemetery and to then move from that process to disinter and reinter those remains or to come to a site disposition agreement is a very cumbersome process.

The sections of the act starting at section 68 go on to define a process for dealing with burial sites which is different from dealing with cemeteries, which are approved. We have worked very hard with the archaeological community and with the native community to discuss those provisions to try to find a process that, first, protects everyone's rights—the land owner's rights; the representatives of the deceased, whether it be a native group or others; the municipality that promotes the interests of the scientific community, such as archaeologists—but the bottom line is that through this process there will be disputes between, for example, an archaeologist and a native band, the native band saying, "This is a sacred burial ground and we will not permit the removal of those remains from this area," and the archaeologist saying, "But it is of major scientific importance; you must permit us to do that." This process that is defined in the bill allows for the cemeteries registrar to be involved in mediating that process, coming to a site disposition agreement and moving on to binding arbitration if mediation efforts fail.

I guess the key thing from our point of view is that we have never, to my knowledge, had an unmarked burial site where the parties have not finally come to some agreement in this province, that has been a stalemate. We have always resolved those sites in one way or another, but the process of getting there has been just far too cumbersome and we have tried to propose a process that would get us there more easily.

Mr Wildman: We will be getting to that; I just want to deal with the definition here. Essentially, you are saying that somehow the intent has to be determined.

Mr Tappenden: Yes.

Mr Wildman: That is what determines whether it is a burial site. It

Mr Wildman: So it could be any portion of the skeletal remains if, through whatever process, it were determined the intent was that human remains be interred at this place.

Mr Tappenden: That is correct.

1550

The Chairman: Is the committee ready for the question on Mr Haggerty's amendment? All those in favour? Opposed?

Motion agreed to.

Mr Wildman: I have questions on other definitions. With regard to "cemetery," this follows along the same line of questioning I had a moment ago. Does "cemetery" mean more than one grave, or could it be just one grave?

Mr Tappenden: It could be just one grave.

Mr Wildman: Would the same thing apply, as well, if that gravesite had been disturbed in some way but it was determined that there was, in an archaeological site perhaps, a partial grave found, that is, part of what was a grave at one time but perhaps had been eroded away by wind or wave action or whatever or had been vandalized? Could that portion of a grave still be considered a cemetery?

Mr Tappenden: I should qualify my answer by saying that while it is theoretically possible that a cemetery could be defined as containing the human remains of only one body, it is normal that cemeteries in all North American tradition contain the remains of more than one body. So while it is theoretically possible, typically an archaeologist, in examining a site where there are the remains of fewer than two bodies, will look at that and say, "Because there are no other bodies buried around here, it does not appear to me that this was a burial site."

Mr Wildman: This is not just an esoteric discussion on my part. I can give you two examples of why I am raising this. I am sure this is a problem, particularly in southern Ontario where there is such an amount of urban development.

In my area, where I have a significant aboriginal population, I have had two instances of this. In one case, there is a site that is now part of a provincial park where there was only one grave but apparently the grave of a well-known chief from the 19th century. It was considered by members of a first nation to be a sacred site. Their argument was also that they should have a say on what should be allowed to happen on that site, even though there was only one grave.

There was another case, unfortunately, where on an Indian reserve in my riding—in this case there was more than one grave—there was significant erosion that had taken place. This was a burial site that was on the bank of a river. The river had eroded over the years and there was significant erosion.

There was a question as to how this site should be rehabilitated in order to ensure that the human remains that had been interred there were not unduly disturbed.

This is an important question for first nations. I am a representative of many of those people and that is why I am raising it. I am not raising it just to have a nice discussion about archaeology.

Mr Yurkow: If I may, this would apply to the one grave. It is the intent at the time of the interment, and all the definition is attempting to do is take away, say, accident victims. There may have been three or four caught in an avalanche and it was never intended as a cemetery. So, the number of bodies is irrelevant; it is the initial intent. The solitary chief who was buried was intended to be buried in that, as though it were a cemetery.

Mr Wildman: I think this question may have been answered, but I will raise it here. I do not have questions until we get to page 3. There are a lot of definitions here. I have some questions on page 3, if you would like me to go to that.

The Chairman: No other indications, so go ahead.

Mr Wildman: Under "human remains," it says, "'human remains' means a dead human body and includes a cremated human body," as you indicated earlier. Again, this relates to my earlier question. Does this also apply to skeletal parts rather than fully "articulated," which I think is the term you used, skeletal remains?

Mr Tappenden: The advice I have been given by legal staff over time is that if, when the interment took place, a complete body were interred, then whatever is left on the site could be construed to be a burial site or a cemetery. However, if only a part of the body was originally interred, then it clearly cannot be a cemetery or a burial site. It has to do with how much of the body was interred initially versus how much is left now.

Mr Wildman: Right. Okay. Again, whether or not a human being was buried is the question.

Mr Tappenden: Yes.

Mr Wildman: I have a question with regard to interment rights. An "'interment rights holder' means a person with interment rights with respect to a lot and includes a purchaser of interment rights under the Cemeteries Act." Does that also include the heirs of the purchaser?

Mr Tappenden: I defer to our legal counsel on this matter.

Mr Cooper: You would have to see how it is used in the act, but the right to inter could be passed on after the death of the original purchaser. Whoever was either the personal representative of the interment rights holder or the heir of that right would be an interment rights holder.

Mr Wildman: If there are no heirs, then who assumes this function?

Mr Cooper: We are getting into estate law. The individual would have a personal representative. If there are no heirs and no personal representative—

Mr Wildman: It could be a very old cemetery and you might not be

able to identify who the heirs would be.

Mr Cooper: We are talking about someone who has the right to require an interment, so we are talking about an individual.

Mr Wildman: All right. I will get to that later on in the act then.

There is one other question I have with regard to markers. You say "marker" and you list "monument, tombstone, plaque, headstone," and all these other things, "structure or ornament," and then "mausoleum, crypt," and so on. Does it also include burial mounds that were used by first nations?

Mr Tappenden: My understanding of the definition says "or other structure or place intended for the deposit of human remains," and that would be broad enough to include anything, including more modern things like trees or shrubs or more ancient things like burial mounds.

Mr Wildman: Okay. The question of prescribed person: Is who they are going to be defined adequately further on in the act?

Mr Tappenden: "Prescribed persons" is generally used in a particular definition or provision, and in each case there may be different prescribed persons. For example, in dealing with the unmarked burials issue, there will be persons prescribed who must be contacted or notified and consulted with respect to a site disposition agreement. In other areas where it has to do with interment rights, the closure of a cemetery or whatever, there would be a different list of prescribed persons. They will be individually described in the regulations.

Mr Wildman: Thank you.

The Chairman: Anything else on section 1? Has this been moved?

Clerk of the Committee: No.

The Chairman: Oh, we have not dealt with amendments yet.

Hon Mr Sorbara: I suspect that Mr Haggerty has a motion.

Mr Wildman: He moved it.

Hon Mr Sorbara: Oh, he did move it.

Clerk of the Committee: He has another one.

The Chairman: Yes. We did pass the first amendment moved by Mr Haggerty. Go ahead with the one on municipalities.

Mr Haggerty: This is one of the concerns shown by a number of municipalities—I think it was Peel and Brampton—about the definition of a municipality.

The Chairman: Mr Haggerty moves that the definition of "municipality" in section 1 of the bill be amended by striking out "county government" in the third line and "regional government" in the fourth line.

Mr Haggerty: This deletes the reference to county and regional governments from the definition, municipal responsibilities in the act

intended to fall on lower-tier governments.

The Chairman: Any comments on Mr Haggerty's proposed amendment? Are you ready for the question? I see Mr Wildman nodding his head. All those in favour?

Motion agreed to.

Section 1, as amended, agreed to.

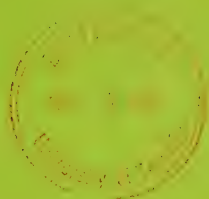
The Chairman: It being four o'clock, are members of the committee amenable to adjourning now and commencing with section 2 tomorrow morning at 10 o'clock? The committee is adjourned.

The committee adjourned at 1601.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

WEDNESDAY 4 OCTOBER 1989

Morning Sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Haggerty, Ray (Niagara South L) Mr McGuigan

Lupusella, Tony (Dovercourt L) for Mr Brown

Pelissero, Harry E. (Lincoln L) for Mr Lipsett

Runciman, Robert W. (Leeds-Grenville PC) for Mrs Marland

Clerk: Mellor, Lynn

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Tappenden, Eric, Director, Business Regulation Branch, Business Practices
Division

Haggerty, Ray, Parliamentary Assistant to the Minister of Consumer and
Commercial Relations (Niagara South L)

Cooper, Jerry M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 4 October 1989

The committee met at 1013 in room 230.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
(continued)

CEMETERIES ACT, 1989
(continued)

Consideration of Bill 30, An Act respecting Funeral Directors and Establishments, and Bill 31, An Act to revise the Cemeteries Act.

The Chairman: The standing committee on resources development will come to order. We are debating Bill 31, An Act to revise the Cemeteries Act. Yesterday, we had completed section 1.

Section 2 agreed to.

Section 3:

The Chairman: Any questions, amendments or comments on section 3? Shall section 3 carry?

Section 3 agreed to.

Miss Martel: We have a question concerning what will happen in subsection 3(3).

The Chairman: You mean the one we just carried?

Miss Martel: Yes, sorry. I am a little late here today. There is a question that we have to raise concerning unorganized townships. We have got crown land applying to the Ministry of Natural Resources for approval. What do you do in cases—

The Chairman: Are you on section 3?

Miss Martel: Yes.

The Chairman: Is that agreed? All right, go ahead.

Miss Martel: I do not think we need an amendment.

Mr Wildman: There should be some clarification here in that it says that "in an area without municipal organization, that is crown land at the time of the application for consent, the applicant" will have to get approval from the Ministry of Natural Resources. What about private land in an unorganized township, patented land?

Mr Tappenden: Yes. That is something that we struggled with in the drafting of the bill. In practical terms, what happens on private lands—on any lands other than crown lands in unorganized territories—is that the Ministry of Natural Resources maintains the cemetery under contract if the

land owner does not assume responsibility for that. That is the understanding we were given by Natural Resources. As I understand it as well, Natural Resources is not obliged to do so by statute, but on occasions where this has occurred in the past, my understanding is that there has been funding through the Ministry of Northern Development and Mines and that Natural Resources has done it under contract. I have just been given a note which indicates that, for the establishment of a cemetery on private lands, the registrar alone under this statute would be required to approve the establishment.

Mr Wildman: This section right here just deals with the establishment.

Mr Tappenden: That is right.

Mr Wildman: Further on in the bill we are going to be dealing with abandoned cemeteries, for instance, ongoing maintenance and those kinds of things. The bill does not really address these problems in unorganized communities. Just in regard to the comments that have just been made, Mr Chairman, frankly, they are not accurate. My constituency office is located in an unorganized community called Goulais River. Just down the road from the small mall complex where my office is located is a cemetery on private land in this unorganized community. The local neighbours maintain that cemetery on a volunteer basis and they have had a very difficult time receiving any kind of funding.

We have attempted to get funding from Northern Development and Mines. We have attempted to get assistance from the Ministry of Natural Resources. You quite correctly said it does not have any obligation and boy, when it does not have an obligation it does not do it. The fact is that we are in a situation where it is not going to be a big problem in terms of the whole provincial scene, but if you are going to allow for the establishment of cemeteries or crematoriums in unorganized areas under the purview of the registrar, then the question arises, what happens when in the future those are not being properly maintained and there is no authority?

It was suggested at one point, for instance, that there is this quasi-municipal structure in an unorganized area called the local services board. But in the legislation making it possible for the establishment of local services boards, there are specific functions they can carry out under the aegis of the Ministry of Northern Development and Mines, things like garbage collection, street lighting, recreational programs and so on. It does not include maintenance of cemeteries. Perhaps it should, but it does not.

Mr Haggerty: I think you raised a valid point there and perhaps the message has gone through to the ministry responsible here for it that perhaps the Minister of Northern Development (Mr Fontaine) will take this into consideration.

The Chairman: I wonder if this would be a good time for Mr Tappenden to respond to Mr Wildman's question on mounds.

Mr Tappenden: I do not think the chairman meant that as a joke, because I asked the chairman for permission to correct the record when you asked the question about the definition yesterday under section 1.

Mr Wildman: The Blue Jays died on the mound.

Mr Tappenden: The definition of "marker" was what you were asking

about and whether or not native burial mounds would fall under the definition of marker. Legal counsel yesterday brought to my attention that the term "other structure or place intended for the deposit of human remains" was not what was meant in the definition of marker there; we were really talking about a structure or ornament affixed or intended to be affixed to a burial plot, structure or place and so on.

1020

In the case of burial mounds, it is now my understanding that the mound sometimes constitutes the place of interment itself rather than an ornament or decoration of that place of interment. In other cases, there is a small mound which is intended to serve as a marker of that place of interment. In each individual case one would have to assess whether or not it was intended to be a marker or not. I apologize for the misunderstanding there.

Mr Dietsch: If Mr Wildman is satisfied with the explanation that was given—and I appreciate what he is saying with respect to some of the private cemeteries in unorganized areas—I guess in my view it really is not an awful lot different from the private cemeteries, which are many, in the area I represent. People struggle along, trying to maintain them at a level that I would consider a decent and caring approach, but they have an opportunity of abandoning them and they could go to the local municipality, where in an unorganized area it is a little bit more difficult. So it goes to the Ministry of Natural Resources or the Ministry of Northern Development and Mines. I appreciate what he is saying, but I guess I see the two of them sort of tying themselves somewhat together. It makes it onerous. I think those kinds of things should be looked at.

Mr Wildman: I appreciate Mr Dietsch's comments. In response to the parliamentary assistant, Mr Haggerty, I think if the ministry is prepared to discuss what is not a major problem—

Mr Dietsch: No.

Mr Wildman: —across the province, but in some communities is a difficulty, with the Ministry of Northern Development and Mines, there has to be somebody—

Mr Dietsch: I guess the point I raised too is that the struggles to maintain those cemeteries—and I know very well that it is happening in many other areas, not just in my area—at a level of care that I think is respectful also looks at those areas. I guess we have to be careful as to what kind of approach we take so that we treat them all the same.

The Chairman: Can we move to section 4 since we have already carried section 3?

Section 4:

Miss Martel: A couple of questions were raised concerning this particular section when the city of Brampton was in. They suggested that the word "may" be changed to "shall." We do not necessarily need that to happen. We do think, though, that there should be a public notice that a request for an approval to enlarge or buy new grounds for a cemetery has been made. There should definitely be public notice and then that the public be given an opportunity to respond. If there is no response, then you are not going to need a hearing, but all the public should definitely be notified.

Second, the costs of that notification should be recovered from the applicant, the developer or whoever the owner is who is making the request.

Mr Wildman: If the government is not prepared to move on that, we would move an amendment.

The Chairman: Is there any response from the ministry?

Mr Haggerty: Are you suggesting that you do not want the word "shall" in there?

Miss Martel: In this present context it says "may hold public hearings," and they had suggested that the group "shall hold public hearings." What we have said is that they shall provide public notice that there has been an application made to purchase extra land or to expand. If people are opposed to that, they can make their concerns known to the municipality, which then may lead to a public meeting. But there may not be a need for a public meeting because people may not be opposed.

Mr Haggerty: In this particular case, if a municipality or some person or corporation has decided that it wants to perhaps establish new cemetery grounds, I imagine it would have to conform to the local municipal bylaws. No doubt, if they move in that direction, then they might not hold public hearings, but the concerned citizen would still have a right to an objection, I believe; to the Ontario Municipal Board.

Miss Martel: All right, but I think the point of the public hearing was to determine whether the approval was in the public interest. It was a forum for members of the public to get either their agreement or their disagreement on record, because the definition of public interest does not appear anywhere in the bill.

Mr Tappenden: Just to clarify that, while Brampton took one position on that, Peel took the other position, which was of interest. The responsibility for giving notice is to be contained more fully in the regulations, and I can just refer you to a couple of sections. In fact, it would not be the municipality's responsibility to give public notice; it would be the applicant who is required to give public notice. They would have to demonstrate that to the municipality, that adequate notice had been given and what the response to that notice was. The power to do that is contained in paragraph 76(1)1, and we would be listing there the public notice requirements with respect to establishments.

Miss Martel: Okay, and if the applicant will be covering the cost, then that will be fine for us.

Mr Tappenden: Yes, that is correct.

Section 4 agreed to.

Section 5:

Miss Martel: There is a question concerning "reasonable time." I think there is a need to define this particular section, because you may have a municipality that wants to avoid a contentious issue and will put it off and put it off. The suggestion in one of the briefs was that in fact we say "reasonable time," for example, perhaps 90 days, after which case if the municipality has not said one way or the other, it would be seen to be a

denial of the owner's request and the owner could proceed to the Ontario Municipal Board. I do think we should be defining reasonable time instead of leaving it that wide open.

Mr Tappenden: I guess my general response to that is that we struggle in many of these statutes—I know in looking at something like the Condominium Act, for example, where delays in approvals are a constant problem—with trying to place limitations on various bodies, either at the provincial or the municipal level, or on private bodies, for that matter, which are a part of that process. We have generally preferred to use clauses like "reasonable time" because in every situation what is reasonable time might be different, depending on the complexity of the application, the size of the amount of land in question and so on, and depending frankly on the level of sophistication of the municipality and the resources it has.

Legal counsel may want to correct me or speak to this if I am wrong, but my understanding would be that if the applicant felt that the municipality was taking an unreasonable amount of time, he would have the right to seek leave of the Ontario Municipal Board for a hearing on the basis that the municipality had taken an unreasonable amount of time.

Mr Cooper: They would be able to go to the Divisional Court on a mandamus type of application.

Mr Wildman: I think that is cumbersome and onerous. I therefore move an amendment.

The Chairman: Mr Wildman moves that subsection 5(1) of the bill be amended by striking out the words "a reasonable time" after the word "within" and substituting therefor the words "90 days."

Mr Dietsch: Could you give us an elaboration of why you chose 90 days? Why not 120 or 160 or 60?

Mr Wildman: I will be flexible. If the government would accept 120 days, that would be fine with me. I am just giving a number.

Mr Dietsch: That is what I want, some rationale for your number.

Mr Wildman: I just want a number, that is all. That is my rationale: I want a number. If you feel that 120 days would be more appropriate than 90 days, that would be acceptable.

1030

I will give you an example. This is not a case with regard to a cemetery, but in a municipality in my constituency there was an application by a gravel pit operator, an aggregate operator, to expand his aggregate operation. The neighbours were opposed and they went to the municipal council and they raised objections and nothing further happened. The neighbours therefore assumed that the municipal council had agreed with their position and that was it. Then they found two years later that, without notifying them, the municipal council amended its zoning bylaw and allowed the gravel pit operation to be expanded. The neighbours now are in the position of having to appeal on that case to the Ontario Municipal Board and their lawyer is going to be arguing that this was not done within a reasonable time; two years is not reasonable.

Why should we have these kinds of situations occurring? Everyone knows how many days are required and people must act within that prescribed period. It would be better and we would avoid having to go to the OMB. The OMB is a very busy agency and it sometimes entails considerable cost for the people who have to intervene before the OMB.

I would be quite happy to accept 120 days if the members of the government party believe that that would be more reasonable, I just wanted—

Miss Martel: Just for clarification, Mr Dietsch, the 90 days came out of the brief presented by the city of Brampton. That is where it was taken from.

Mr Dietsch: We all know the variances that are involved in applications and the complexities of some of them. For example, to go to the Ontario Municipal Board, I think sometimes you can get through in six months, sometimes it takes 18 months, and both time frames could be reasonable, depending upon the complexity of the question you are taking before them. I think that is the point that people have tried to explain.

I would have no objection if we knew that the case was clear-cut and simple, I think, because I agree with you in terms of trying to speed up the process. The difficulty I have is in trying to buy into a time when we do not know the complexities of the cases that come before the municipality.

For example, if it came before the municipality at the beginning of the summertime, and almost all municipalities go to a summer schedule and have very few meetings over a summer period, it creates some difficulties in getting the work done. That is where I am having difficulty in buying into a period of time. I do not know how we address it, not knowing the complexities of the cases that come before us yet picking a figure out of the sky. I mean, I picked 120 out of the sky the same as you did the 90.

Mr Wildman: Actually, my colleague picked it out of Brampton, not out of the sky.

Mr Dietsch: She forgot to tell you.

Mr Wildman: I would be happy to change it through the year.

The

Chairman: Any further discussion on Mr Wildman's proposed amendment?

Mr Haggerty: Looking at the term "reasonable" here, my experience on municipal days, and I do not think it has changed that much, is that it will take perhaps longer than 90 days, and if anybody would expedite it within 90 days, then the public would be concerned about it and saying, "You've moved too fast."

If you are changing zoning, dealing with the restricted area zoning bylaws and so on, I will tell you it is a long process to have that done. It permits the public to have a general input into it. I think of a recent incident in the town of Fort Erie where the municipal council went out and purchased additional land for cemetery purposes. It was a long process, almost a year, and it finally ended up at the Ontario Municipal Board, which made the final decision.

The Ontario Municipal Board alone says 21 days now even to expedite

matters before the board. For anybody objecting to it, it is within 21 days. So it is a lengthy process.

If you want to bring it down to 90 days, you are going to be really not allowing the public input in it, as it should have. I suggest that "reasonable" is the area that we should be looking at. To put a time element on, I just feel that you are going to deny the public access.

Mr Wildman: Would you accept a suggestion that instead of 90 days we put in "within a very reasonable time"?

Mr Haggerty: That is what it says, "within a very reasonable time."

The Chairman: I am not even too sure that would be a friendly amendment to your amendment.

Any other comments on Mr Wildman's proposed amendment? Ready for the question? Shall Mr Wildman's amendment carry? All those in favour? All those opposed?

Motion negatived.

Mr Wildman: Most unreasonable.

The Chairman: Any other comments on section 5?

Interjections.

The Chairman: Shall section 5 carry? No?

Miss Martel: A few comments, Mr Chairman. It concerns public interest, because we see that going through—

The Chairman: What section are you talking about?

Miss Martel: Subsection 5(2), "the principle factor shall be the public interest" in determining a request for approval. That appears a lot in this bill and I am just wondering if the ministry can give us some idea as to what they are talking about when they discuss public interest. I recognize it will be in the regulations.

Mr Tappenden: I guess when an application is put before a municipality to establish a cemetery, if it is on land that is privately owned, for example, it may be church lands and the church applies to sever a part of those lands for establishing a cemetery, there would be those who would make a strong case that since it is on privately owned lands the private interest should supersede the public interest. There are also, I guess, municipalities now that have taken some very extreme measures in not permitting, for example, the establishment of any new cemeteries.

At a provincial level, looking at the issue of where that community will bury its dead, one has to question whether those decisions taken in the public interest? This is really just to stress that when they are taken, these decisions shall be made in the public interest. It may almost be considered a given that that is the case, but we merely wanted to stress that that is the basis for these decisions, rather than private interest or the interest of tax base or anything else.

Miss Martel: Okay.

The Chair: Any other comments on section 5? Shall section 5 carry?

Section 5 agreed to.

Section 6:

Mr Wildman: "The Ontario Municipal Board may reverse the decision appealed and substitute its own decision." Obviously, the OMB can also confirm a decision. In terms of substituting its own decision, will it be up to the OMB to determine the parameters within it or will there be something in the regulations that will be a guide to the Ontario Municipal Board?

Mr Tappenden: My understanding is that the act empowering the Ontario Municipal Board gives it the right to uphold a decision as well and that it has fairly broad powers to substitute a decision of its own for the municipality's decision. I do not believe we had envisioned having regulations which would limit that power to substitute.

Mr Wildman: Okay. Thank you.

The Chair: Anything else on section 6? Shall section 6 carry?

Section 6 agreed to.

Section 7 agreed to.

Section 8:

Miss Martel: I go back to the question of the public interest, because here we have a registrar who might order the cemetery to be closed if the closing is in the public interest and I am concerned about who will have input into determining what is the public interest in this particular case. What mechanism is there to have briefs or submissions, etc, to him or her concerning the issue of closing?

Mr Tappenden: Again, my understanding is that the regulations will prescribe appropriate notice provisions. The current act certainly contains those notice provisions and there is provision that notice be given to certain parties and that there be public advertising so that anyone who cares to have an interest may make representation. Those representations would be taken into account in any consideration of whether a cemetery would be closed.

1040

Recently, for example, in meeting with the Ontario Historical Society we have indicated that we would be pleased to place in regulations explicitly that the local historical society and the local architectural conservation advisory committee would be parties who would be invited to participate and comment on a proposed closure. In unorganized territories there would be provision that it would revert to the provincial association and whatever other local bodies may be appropriate.

Miss Martel: Just on that, I notice there are only about 200 LACACs and many more hundreds of municipalities, and there may not be a local heritage organization. In those cases, will you then revert to the provincial association so that it may have input?

Mr Tappenden: Yes. We will do two things: One, we will ask the various heritage groups what other local bodies may be appropriate where LACACs do not exist; and two, there will be a reference back to the provincial level where there is not a local group responsible.

Mr Wildman: May I ask a question? Who can apply for an order?

Mr Tappenden: What was your question?

Mr Wildman: Who can apply to have it closed? Obviously, the owner cannot. Is there anyone else? The municipality can too, but could some other interested party, perhaps the neighbours of an area, the local community association?

Mr Tappenden: Generally, it would be the owner, which could be a municipality, or it could be a voluntary group such as a group of neighbours who have simply taken it on. However, I am informed that under this section, because it is not in any way restrictive, anyone, theoretically, can apply.

Mr Dietsch: You may very well end up with a split. A lot of the cemeteries down my way are old family cemeteries. Some of the family members may feel that they have contributed too much to it and wish to close it out, whereas others may wish to have it open. It could even be a part of the individual family group that operates it.

The Chair: Anything else on section 8? Shall section 8 carry?

Section 8 agreed to.

Section 9:

Miss Martel: I want to ask why, if the registrar decides to close a cemetery, there would be any reference made to requiring the owner to disinter the human remains and to remove the markers and relocate them. There is a provision for that in the act and I am wondering in what types of cases you would go to that extreme, to move everything and everyone out of there.

Mr Haggerty: Highway expropriation, municipal expropriation and government expropriation that may require the land.

Miss Martel: Okay.

Mr Dietsch: We moved one recently at the Niagara Peninsula to make provision for the extension of Highway 406. In that case the remains were removed to another section of another cemetery; the whole process.

Mr Tappenden: Normally, closures only occur where it is intended that the remains would be disinterred and the markers would be removed and so on. If in fact one plans to leave the human remains and the markers and so on in place, then there are very few reasons why one would want to close the cemetery, because as long as human remains are there, it must remain a cemetery.

Normally, if someone is building a highway or there is development proceeding, expropriation, any of those reasons where you would actually want to use the land for some other purpose, the process of closure now is very cumbersome administratively. It is also very thorough in terms of consultation. We would plan to make the process less cumbersome but more

thorough in terms of consultation to ensure that everyone who may have an interest or may be affected by the closure has an opportunity to make representation in the process.

Miss Martel: Just following on from that, in terms of the closure itself, if you are in the position that you are removing or disinterring the bodies and removing markers to another location, who do you have on site who is monitoring that? I go back to the concerns that were raised by the heritage society that in the process of disinterring bodies and moving markers you are doing all kinds of damage that cannot be rectified. Has the minister given any idea as to who will be involved in that particular process?

Mr Tappenden: Generally, the cemetery owner, whether it be a voluntary group or a church group or a municipality or a private group, would employ the services of cemetery personnel or people who are expert in this, or in fact services of the municipality itself. I do not know how frequently this occurs, but from time to time scientific personnel are employed, archaeologists and osteologists and so on, to supervise certain aspects of the work. In addition, from a health perspective, the medical officer of health may attend at any disinterment at his discretion if he believes it is necessary.

Miss Martel: If I just might place it on the record, I would like to see in the regs that if in fact any part of the cemetery or sections of it have historical value, those parties would be notified, because they may have experts who know how to move that kind of stuff better than a cemetery owner and they should be involved in that process.

Mr Wildman: Is there any provision, or will there be provisions in the regulations, to require that when the remains and the markers are being removed the remains and the marker from each grave site remain a unit?

Mr Tappenden: Remain a what?

Mr Wildman: A unit. In other words, the marker goes with the remains.

Mr Dietsch: You want the stone put under too?

Mr Wildman: No. I mean, let's face it. If they are reinterred somewhere else, I do not imagine the descendants of the deceased would appreciate it if the markers were mixed up.

Mr Dietsch: I see what you are saying. Okay.

Mr Wildman: Also, is there any provision or will there be any provision—let's say it is an expropriation for a public building, for a highway or whatever—that there be some sort of a plaque or something to indicate that this was indeed a cemetery at one point?

Mr Haggerty: It has something to do with heritage, I believe.

Mr Pelissero: It is tough to do on a highway.

Mr Wildman: Just as a matter of fact, I hesitate to say this, considering what has been on the CBC lately, but some of us do fly back and forth and those of us who regularly go out to Pearson International Airport pass, at that major interchange just before the airport, a very small cemetery which is in the middle of a major interchange. Why they left it there is

beyond me --

Mr Pelissero: The historical society, probably.

Mr Wildman: --but it would seem to me that if that had been removed, it would perhaps have been appropriate to have some marking indicating it had been a cemetery at one point.

Mr Haggerty: Just imagine the sign going by Bud's place, "Here lies Bud." You could have a big plot there, eh? That is Bud's place.

Mr Pelissero: "This Bud's for you."

Mr Wildman: Perhaps it is one of these cases of, "Here lies the body of Jonathan Gray, he died defending his right of way."

Mr Pelissero: Mike Farnan was reading yesterday. He gave something about a lady swallowing a spider.

The Chairman: Does that complete debate on section 9?

Miss Martel: I think it does.

Mr Wildman: Yes.

Section 9 agreed to.

Section 10 to 12, inclusive, agreed to.

Section 13:

Miss Martel: I have a question to the ministry concerning the possibility of actually advising those people who hold pre-need packages that in fact their trust has been changed to another trust company and indicating to them who now holds the trust funds for the supplies and services that they have purchased already. As I see it now, the registrar just directs the money to be sent to another trust company. There is no indication that the public who has packages already purchased will be advised of that.

Mr Tappenden: The regulation-making power exists to ensure that any change in the trust agreement or conditions of the trust or anything else may be communicated to the purchaser and I think that would be most appropriately done in regulations.

Mr Dietsch: Just to follow up on that point, did you say that they "shall" be communicated to the people, as opposed to "may" be communicated to the people?

Mr Tappenden: That is an issue that we have been discussing with the trust companies, cemeterians and the consumer groups in order to try to find a satisfactory solution. What we want to ensure is that there is maximum information to consumers without continually reminding them of the fact that they own a plot, and also to not overly burden either the trust company or the cemetery with these costs. We are looking for a happy medium to achieve those objectives and we are discussing that with the groups right now.

The Chairman: Anything else on section 13?

Section 13 agreed to.

Section 14:

The Chairman: Licences, section 14.

Mr Wildman: Here we have, "No person shall own a cemetery...unless licensed under the act to own that cemetery." Are there situations now where there are cemeteries that are owned that have not been licensed under the previous act?

Mr Tappenden: The provisions with respect to licensing are all new provisions. Under the current statute cemeteries are not registered or licensed at all. The process of regulating cemeteries just does not include that, and that is a major weakness in the current statute that we do not have those kinds of requirements. This will give us a handle on everybody who is out there and certain aspects of their operation which we need to effectively regulate.

1050

Mr Wildman: In my area, it is quite different from the experience that we have seen in southern Ontario. All of the cemeteries are municipally owned in Algoma district except for some very old ones that have been abandoned and are having to be maintained, in which case the municipalities, in most cases, are ending up owning them as well. But if there is a municipality that owns a number of cemeteries, that is, there may be a large municipality in southern Ontario that has a number, would it require a separate licence for each cemetery or will it be able to have all of its cemeteries under one licence to the municipality?

Mr Tappenden: No. The act would require that each cemetery be separately licensed. However, that would not result in an increase in fees related to the number of sites, because the licensing fees will be based on the number of interments rather than on the number of sites.

The Chairman: Anything else on section 14?

Section 14 agreed to.

Section 15:

The Chairman: Mr Dietsch moves that clause 15(2)(b) of the bill be struck out and the following substituted therefor:

"(b) the past or present conduct of the persons referred to in subsection 2a affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty."

Mr Dietsch further moves that section 15 of the bill be amended by adding thereto the following subsection:

"2a. Clause (2)(b) applies to the following persons:

"1. The applicant;

"2. An officer or director of the applicant;

"3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person;

"4. Any person having a beneficial interest in the operation of the business of the applicant or licensee."

Mr Dietsch: It is basically to outline the ownership of the cemetery.

Miss Martel: We do not have a problem with the amendment. We do want to go back to yesterday's discussion in the similar circumstance where we talked about mental competency and see if we can just add wording similar to what was added yesterday. I think what we did was add "competence" in front of "integrity."

Mr Dietsch: "Competence or."

Miss Martel: Before we move that whole thing, can we just add that?

Mr Cooper: I might be able to help here. The competence issue is already found in clause 15(2)(c), "the applicant or managing employees...do not have experience and competence required to manage the cemetery."

Miss Martel: My apologies. Thank you.

The Chairman: Any other comments on Mr Dietsch's amendment? All those in favour of Mr Dietsch's amendment?

Motion agreed to.

The Chairman: Any other comments on section 15?

Section 15 agreed to.

Sections 16 to 22, inclusive, agreed to.

Section 23:

Miss Martel: We have some questions on this section concerning the ministry's determination to refund at 50 per cent of the current market value. I suppose we have more questions than anything at this point in time and we may or may not move an amendment.

I think all the members who were here last week recognized that there are some problems in this section. We agree fundamentally that the consumers should get money back if they are forced to leave. I guess the question is, should it be closer to 100 per cent of what they paid at the time of the purchase or should we be adopting the ministry's position right now, which is 50 per cent of the current market value regardless of the price that was paid?

We heard that this would cause some problems for small cemeteries in rural Ontario because if a family plot was purchased at \$25 or \$500, they are now going to be paying probably an increased rate and may not have as many opportunities to resell the plot as they would in an urban area.

On the other hand, I recognize that we are trying to avoid speculation as well and we are trying to find a happy medium in here somewhere as to what price should be offered to the consumer.

I guess it is my opinion that we should be trying to pay the consumer back somewhere around the amount of money that he in fact actually paid out when he purchased the plot. In the case that Morah raised, the person who bought it last year at \$2,000 and is leaving this year would actually get closer to \$2,000 rather than \$1,000.

I would just like some comments from the ministry as to how we arrived at 50 per cent of the current market value and why we would not be able to look at a system that is perhaps at 100 per cent of what they paid, minus an administration fee, taking into account that there is an amount of money that would have gone into perpetual care as well.

We agree with what you are trying to do, we are just concerned about how you arrived at that type of mechanism.

Mr Tappenden: I guess the first thing to say is that the statute itself does not contain any formula for repayment. What it contains is the right of the interment rights holder to require the repurchase by the cemetery owner. That is all the statute requires. The plan to develop a formula is to do so in regulations. The objectives that we have are: first, to ensure that the consumer is repaid at a reasonable level for the investment he made in purchasing the interment rights to a lot or a plot; second, not to unduly burden the cemetery owner; and third, not to detract in any way from funds which are placed into care and maintenance for the perpetual care of the cemetery.

The formula of 50 per cent is not in any way carved in stone in anyone's mind, let alone in regulations at this point.

Mr Wildman: Or even on a monument.

Mr Tappenden: Or on a monument; that is correct. The formula of 50 per cent is something that we have developed for the purposes of consultation with the cemetery community and consumer groups and others. The minister has said himself that he is not wedded to that and that if, for any reason, whatever formula is developed proves to be a hardship to either consumers or cemeterians, he will review it.

That being said, I guess the rationale for the 50 per cent goes like this, in case you want to know how we arrived at that, although we are not wedded to it: The purchasers right now have no right whatsoever. In fact, they are prevented from selling their rights to the lot to anyone other than the cemetery owner. If the cemetery owner says, "Go fly a kite," then that is about what they have to do.

There are cemeteries that have policies at present. Memorial Gardens has given representation here that its policy is to pay back 65 per cent of the original purchase price. For example, if 20 years ago someone purchased a lot for \$100, 20 years later, today, they would get back \$65 even though Memorial Gardens could turn around and sell that for \$800 today and would receive the income twice on perpetual care and would have used the \$65, which was not originally deposited into perpetual care, as income and profit for all these years until they had to pay it back, because it would be in the revenue stream.

1100

We have instances with commercial cemeteries, I must say, where they claim to have a policy of repurchase. We had one instance where an elderly

woman who lived in Quebec had purchased a pre-need package, including a cemetery plot, and when she moved to Ontario was sold, through solicitation, a second package for her own death. The same company owned both cemeteries, and although they have a central record of purchasers, they had sold her two pre-need packages, in effect, and two plots.

When she requested that they refund her on the second one they refused. When the ministry contacted the company they again refused, while claiming to have a refund policy. It took a call to the president of the company to have that turned around, and even then they refunded her at a very low amount in relation to the current value of that policy. So frankly, the current situation is not very good.

Many other groups, nonprofit particularly, do what you have suggested, and that is to refund 100 per cent of what was originally paid, which over time becomes a fraction of the value. In effect, it becomes very much a windfall for the cemetery to sell and have the use of that money twice. It is very much at the consumer's expense.

There are cemeteries like the Catholic archdiocese of Toronto, which operates a number of cemeteries in the Toronto area, that has a policy currently of refunding 50 per cent of the current filed rate, which is the current market value. They feel that gives them an advantage, a benefit of being able to sell the lot twice—they get income twice, they contribute to the perpetual care fund twice and therefore get the income from the care fund twice for the same plot—but also that it gives a reasonable refund to the purchaser, who then has to turn around and repurchase a plot, if he moves to Australia or Vancouver or wherever, at 100 per cent of market value.

If in fact they are only putting 35 per cent into the care fund and they have that other 65 per cent to use for their own purposes in their revenue stream, we feel that it is more than fair to cemeterians to only require them to pay back 50 per cent. One of the reasons we do not want to go to 100 per cent, for example, or even 65 per cent of current market value, is that we do not in any way want to contribute to, as someone put it, trafficking in graves or speculation with respect to interment rights.

That is how 50 per cent was arrived at. I can assure you that we will have ongoing discussion with all cemetery groups and consumer groups in relation to this to ensure that whatever regulations are put in place are fair to all parties.

The Chairman: Any other comments on section 23?

Section 23 agreed to.

Sections 24 to 31, inclusive, agreed to.

Section 32:

Mr Wildman: Excuse me, Mr Chairman. This may be dealt with later, so I am not certain if it is the best time to ask this question, but on section 32, there is a section that deals with the problem of figuring out who has rights if it is unclear. What section is that?

Mr Tappenden: I would have to ask legal counsel for some advice on that; I am sorry.

Mr Dietsch: Are you referring to subsection 32(3)?

Mr Wildman: Yes, right, subsection 32(3). Sorry. The registrar can have the rights restored, but how does this happen? That is what I do not understand.

Mr Tappenden: Just for clarification, your question is, where interment rights have been abandoned or where the person has died but not taken advantage of those interment rights and there are no apparent heirs or representatives of the deceased, whom do those interment rights revert to?

Mr Wildman: Yes, that is right.

Mr Tappenden: Again, I will look to legal counsel for some advice on this, but my understanding is that those rights, if not otherwise claimed, would revert to the cemetery owner. There is a procedure then to go through to reclaim those interment rights, the waiting period of 20 years, and if the person has not appeared and claimed those rights and they have not been able to find any representatives of the rights holders, then they may resell those.

There is also in section 32 provision that if the person does show up after 20 years and says, "Well, where's my grave?" the cemetery owner is required to provide that person with a lot, and if the cemetery is full, to find a lot somewhere else.

The Chairman: Anything else on section 32?

Section 32 agreed to.

Section 33:

Miss Martel: We have a concern in this section, because we are afraid that the cemetery owner is given a blanket approval to remove the stones in that particular cemetery. We can see that in this section there has not been any consideration of what the historic value might be. Therefore, we are really concerned that you have set into motion a process where you are going to be destroying a lot of tombstones, markers, etc, that otherwise might have historic value. If there is no change in terms of the wording in here or any wording that will say you are going to be taking these into account, we will be voting against this section because we are very concerned about what full-blown rights you give to owners at that point.

Mr Tappenden: You are quite right in pointing out that the cemetery owner, under certain conditions, has the right to move a marker. However, section 33 provides only very limited and restricted rights for the cemetery owner. This section only applies where the interment rights to a grave have been abandoned, and that is a very rare occurrence.

If in fact someone purchases a lot and has a headstone placed on that lot at the time he purchases it, or some time later, but has not used the grave to inter—that is, there is no body, there are no human remains there but the headstone was put up in advance and may have been partly carved to have the person's name on it but no date of death, because it probably has not happened yet—in a case like that, where the person in sections 31 and 32 has then abandoned the rights to that lot and moved away and there are no apparent heirs or representatives, not only does the cemeterian have to wait 20 years to see if that person comes to take advantage of those interment rights—and then the cemeterian may remove the stone, which at this point is not

commemorating anyone's death because the interment rights have not been used. But he has to wait a further 20 years to store that stone in the event that the rights holder shows up and demands the use of the grave and the stone itself. This is a very, very rare occurrence, not only where interment rights are abandoned but where interment rights are abandoned and there has been a headstone placed there, so this is a very limited right of a cemetery owner to move a marker.

1110

When we met with members of the historical society after their presentation, we explained that and they appeared to be satisfied. They had felt that this applied to markers holus-bolus and not in those restricted circumstances.

Miss Martel: I have a couple of things, if I might. I do not know what they have said to you, because we were asked particularly in this question to move this and, in fact, asked to have it deleted until the whole proposal could be reconsidered as to whether or not you should be moving markers at all or whether the abandoned cemetery should be kept in place; if it had historical value, keep it intact particularly.

The other thing I am worried about is, you said the cemetery owner might remove and store the stone at the owner's expense. It says clearly in the legislation that the owner "shall," so I am worried about that.

Also, it may be that all the rights holders are dead, but that does not diminish the fact that there would be historical significance. There may be a very good reason why that cemetery should be kept intact and the stones and markers and everything else not moved. You may have just straight flat markers, not necessarily headstones, as well. I do not think I am very convinced yet that in fact they were happy with this, because my indication yesterday afternoon was that they were not.

Mr Tappenden: I did not mean to suggest that they were happy with it—I really could not speak for them and would not like to try—only that we had explained the very significant limitations on that section.

One other limitations which I had forgotten to mention, but it is very significant for that group and in this instance, is that with the amendment that I understand is going to be proposed dealing with section 87 of this statute, it would significantly limit the override of this statute on the Ontario Heritage Act to only section 6. That would mean that under, I believe, sections 4 and 5 of the Ontario Heritage Act, where the municipality has the right to designate any site a heritage site, any cemetery site that was designated as a heritage site—in fact the Heritage Act, with the exception of section 6, would override the Cemeteries Act. If someone wanted to move a marker in a cemetery that was designated as a historic or heritage site by the municipality under the Heritage Act, he would first have to satisfy the provisions of that act before he could take action under section 33 or any other section of this act in order to move a marker.

Miss Martel: One other thing, if I might. The Heritage Act is under review now, right?

Mr Tappenden: Yes.

Miss Martel: What are the chances that some of those sections will be changed? Some of the provisions in terms of the municipality designating heritage cemeteries may be changed as well. We are in a bit of flux because we do not know what the changes are going to be under the Heritage Act, and if there are changes, how they will then impact upon this particular act. That is where my concern comes in, that we are trying to deal with another part of an act that may be changed as well.

Mr Tappenden: I cannot speak for the Ministry of Culture and Communications, but I note that the minister in his comments yesterday was conveying, on behalf of his colleague the Minister of Culture and Communications (Ms Hart), the fact that not only would we try to provide a legislative framework under this statute which would be supportive of heritage matters and heritage concerns but in the review of the Heritage Act currently under way, the historical society's views, as presented, would be seriously addressed and taken into account.

My understanding from the staff of the ministry in the review of the Heritage Act is that, if anything, those kinds of provisions will be strengthened in order to ensure that heritage sites and resources in this province get more attention rather than less.

The Vice-Chairman: Any other comments, questions? Shall section 33 carry?

Section 33 agreed to.

Section 34 agreed to.

Section 35:

Miss Martel: I would like some clarification from ministry staff on this particular section. It is my understanding that every cemetery owner right now will have to set up a trust fund to provide for care and maintenance. I assume there were problems of care and maintenance in cemeteries that provoked this. Now, we did hear from some groups that said they have had perpetual care funds in place for many years and see no need now to remove those perpetual care funds from their own administration to a trust fund under the trust act.

I am wondering if you can respond to why, in those cases where there has not been a demonstrated problem with some of these organizations, we would now make them do that. In particular, perhaps you can refer to section 40, because I see that under section 40, the registrar or the public trustee can in fact request any information on trust accounts, financial audited statements, etc. It seems to me that if the problem was that some groups were not doing it, we could certainly rectify that by the fact that groups that are providing care and maintenance can be checked under section 40. There would be no need for them to have to set up a whole new trust fund.

Mr Tappenden: I think it is important to clarify that the present act provides identical provisions to what are contained in here, that every cemetery must establish a trust fund with either a trust company or the public trustee. There are exemption powers and there are specific cemeteries which have been exempted, but the vast majority of cemeteries in the province have not been exempted.

While I am very sympathetic to many of the small voluntary and religious groups out there that put a lot of time, money and heart into maintaining cemeteries for the benefit of their community or their parishioners, there are a good number of people out there, such as Elder McColl, who gave testimony before this committee, who purely and simply are breaking the law at present. It is our responsibility to enforce that law.

We are not changing the provisions with respect to placing those moneys with a trustee; we are simply carrying them on. We have recommended to the government, when it comes to regulations, that there be fewer exemptions provided in order to make sure that cemeteries are treated equally. However, the government certainly does have the power to exempt any cemetery or any class of cemeteries from any provision of this act, including this section.

I am not meaning to cast any aspersions against any particular cemetery, but as a general rule it is the cemeteries which do not have their funds with the public trustee or with a trust company that have in the past not provided a sufficient amount to be set aside and have not adequately, in many instances, cared for the cemetery.

There are many folks out there who do care for their cemeteries, despite this requirement and despite their lack of compliance with it, but we really believe that the trust funds need to be treated as trust funds and not just somebody's bank account tucked away somewhere that no one has any control of or accountability for.

We also believe, I must say just as a practical point, the situation has changed markedly. When I hear Elder McColl, for example, talking about having to pay \$300 a year on a \$3,000 fund, we can be of considerable assistance to people like him in terms of their investment. He can get a whole lot better deal than he was quoted, if not from a private source, which we believe he could, then certainly from the public trustee, who charges one per cent of initial capital and five per cent on the income thereafter to perform the services of a trustee, which is a very nominal and unburdensome amount.

Miss Martel: In terms of municipalities then, why do they not have to establish a separate trust?

Mr Tappenden: Municipalities, by law, are not allowed to go bankrupt, I gather, and they also are a level of government. Therefore, we felt that they were the only possible group that could and should be exempt under this section.

1120

Miss Martel: Okay. There are some of those. You talked about the exemptions. I take it then that when you deal with the regulations, you will be looking at those particular groups, because I would take it, in spite of the fact that they have not been complying, there may not be a problem at all and perhaps not a need to make that kind of change.

Mr Tappenden: That is true, there are exceptions.

Miss Martel: So perhaps you would look at that.

I just have a question on section 2. The amount that is going to be prescribed to be paid into the fund, how much is that? Is it 50 per cent?

Mr Tappenden: The current statute provides, under regulation, 35 per cent of the price of the lot to be paid into the perpetual care fund, to a minimum of \$35. The government has stated in its public announcements regarding this that the amount will be increased. We have not yet made a determination of whether the percentage will be increased or not. We have certainly had considerable discussion with cemeterians about that. We probably will increase the \$35 amount, because that dates back to, I think, 1955 and has certainly been overtaken by inflation. But again, we have not yet made a determination as to what that would be.

One of the difficulties on a practical level that we are facing there is that many small cemeteries, voluntary ones particularly, and religious ones, are selling lots for \$75 or \$100, which does not in any way cover their cost of land or cost of maintenance, cost of operation. It certainly does not provide enough into the care fund to provide in perpetuity for the care of the cemetery. Without wanting to significantly increase the cost of a lot to consumers, Elder McColl, for example, suggested they were selling lots for 50 cents to \$12. It is no wonder that he only has \$3,000 in his care fund, which is not sufficient to maintain a cemetery in perpetuity.

What we are trying to do is ensure that cemetery lots are sold for an amount adequate to ensure that there is an adequate provision in that fund for the future. By raising the minimum amount without raising the percentage, we would be able to deal with that problem to a considerable extent. It is a matter of how high that level should go, and there has been no decision yet.

Miss Martel: Because I had heard 50 per cent at one point, and I was not sure what that was based on. I would only ask you to bear in mind that there is money coming from that section and then again from section 38, where there would be a particular percentage, so hopefully it will not be so excessive on the side of cemetery owners that they will not be able to—

Mr Tappenden: Fifty per cent is probably too burdensome.

Miss Martel: Okay, great. Thanks.

The Vice-Chairman: Any other questions?

I have one question for the parliamentary assistant or staff. Following from your explanation as to why you believe it is necessary to have a section requiring it be dealt with by the public trustee, why is that necessary for, say, some organizations that are well-established, such as the Catholic archdiocese or others that have their own trust funds, since under section 40 the registrar of the public trustee can require that they provide him with all information and audited financial statements? If you are covering that under section 40, why is that not enough?

Mr Tappenden: The current statute does not have adequate disclosure or auditing provisions at all. We have quite separately provided for greater accountability on the audit side.

The Vice-Chairman: I understood you said that, but does section 40 not cover that?

Mr Tappenden: Yes. What I am trying to explain is that section 40 enhances the accountability and the audit protection of the funds. At the same time, it is often too late if something has occurred. You know, in an audit it is often too late if something wrong has happened. Now, there are many groups,

such as the Ontario Catholic Cemeteries Conference, that have said: "Look, we have been burying people in this province for 400 years. If anything, we have put too much money into perpetual care funds. We can assure you, as the Catholic church, that we will be around for many years to come." We have no reason to doubt any of those statements, and their compliance has been impeccable. The problem is, when you give an exemption to one religious group, then every other religious group in the province says: "Why not us, too?" There are many groups that have the best of intentions but do not have the financial sophistication of a group like the Catholic archdiocese, and we need to ensure that there is as level a playing field as possible.

The Chair: Anything else on section 35? Shall section 35 carry?

Section 35 agreed to.

Section 36 agreed to.

Section 37:

The Chairman: Mr Dietsch moves that section 37 be struck out and the following substituted therefor:

"37. No investment of money in a trust established pursuant to this act shall be made except as permitted under the Trustee Act."

Mr Dietsch: Basically, the current wording of section 37 requires trustees to invest in fairly highly conservative investments. I think there has been a number of presentations made before this particular committee requesting some flexibility. It is viewed that the Trustee Act permits some flexibility in these investments, so that is the purpose of moving this resolution. Members may wish to have further clarification from legal counsel.

Mr Wildman: Does legal counsel want to explain before I raise the question?

Mr Dietsch: It is difficult when we do not know what section 37 of the Trustee Act is. It is somewhat difficult. I can appreciate that.

Mr Tappenden: I can explain the difference, if it is your wish.

Mr Dietsch: Yes, please.

Mr Tappenden: Sections 26 through 28 of the Trustee Act provide that unless a trust agreement provides otherwise, the trustee must invest in a minimum of 65 per cent of interest-bearing bonds or other kinds of investments that are interest-bearing and that a maximum of 35 per cent may be invested in stocks, in equities. There is further qualification of the nature of those equities being largely blue chip that have had a certain performance rate over the last few years.

Since that section was written with the intent of very carefully protecting those trust funds against things like the October crash and poor investment strategies and so on, it has come to our attention from a number of cemetery groups that what that is doing, in effect, is very seriously limiting the potential income from trust funds, which very seriously limits the ability of many cemetery groups to maintain and operate their cemeteries, particularly

many of the smaller cemeteries that have very small funds and need to get the maximum return.

The amendment would allow all of the provisions of the Trustee Act to still apply while not unduly limiting the investment. There are still many protections in the bill if in fact someone, as a cemeterian, tried to enter into a trust agreement that was putting at risk those trust funds, such as the ability to freeze assets, to pre-approve trust agreements, to audit, to place terms and conditions on the licence of a cemeterian and so on.

Mr Wildman: Why did you not make it even wider and allow for them to invest under the Pension Benefits Act?

Mr Tappenden: We have one of the authors of the Pension Benefits Act in the room, so I will let him correct me where I am wrong. The Pension Benefits Act allows for very, if I can use the words, small-1 liberal investment policies.

Mr Wildman: Be careful.

1130

Mr Tappenden: The Pension Benefits Act applies to very large pools of capital administered by generally very sophisticated groups. It also has very stiff restrictions in terms of the pre-approval of investment strategy, the filing of regular updates on investment strategy and performance and so on. It would be far too burdensome for any cemetery to comply with having to file those things with the pension commission.

Basically, the Pension Benefits Act does not require anything to be invested in interest-bearing accounts, it allows everything to be invested in equities in chunks no larger than 10 per cent per company. It allows up to 25 per cent to be invested in real estate, which can be highly speculative, and it was clear to all of the experts that we spoke to that was simply far too loose a set of investment restrictions to apply to cemetery trust funds, which, after all, are trust funds, not pension funds.

Mr Wildman: I would never suggest that a member of the public service would equate the two terms, "small-1 liberal" and "loose."

Mr Pelissero: I have yet to hear you describe the NDP's investment philosophy.

The Chairman: Such a word does not exist.

Mr Pelissero: You would not have anything left to invest.

The Chairman: Are there are further comments on section 37? We have an amendment before us. Any comments on Mr Dietsch's amendment?

Motion agreed to.

Section 37, as amended, agreed to.

Sections 38 to 43, inclusive, agreed to.

Section 44:

Miss Martel: We are concerned in this section with some of the methods of maintenance which may or may not be used by a cemetery owner in terms of the locks, the structures and the markers, etc. We appreciate that the safety of the public has to be taken into account, but I think that some of the heritage groups also raised a valid concern that in fact someone who is not qualified to repair or maintain, etc, in particular heritage sections of a cemetery, could do more damage than anything else.

Therefore, what we would like to do is move that in this particular section there would be added a section as well that would talk about some set standards for stabilization and for conservation, and those standards would be in the regulations, but that in this particular section the cemetery owner would have to comply with standards of stabilization and conservation which would be included in the regulations. I appreciate they are not written yet and there has to be some discussion with heritage groups about what those standards would be, but we would make a point now that this section will defer to those regulations.

Mr Wildman: I understand that a presentation was made before the committee that said there are international groups now discussing the setting of standards. We believe that in this bill there should be reference to international conservation standards that are being developed so that there will be at least a reference in the bill that says maintenance of markers shall comply with the standards, in the regulations, for stabilization and conservation that are in accordance with the international conservation standards that are now being developed. I am wondering why the government has not done that.

Mr Haggerty: As Miss Martel has said, there is an amendment that is proposed that paragraph 76(37) of the act be amended by striking out the words "construction and installation" and inserting in lieu thereof the words "construction, installation, stabilization and preservation." The reason given is that to clearly demonstrate the intention to make regulations regarding the preservation of existing monuments, so they will be covered under the section of the regulations that is more specific.

Mr Wildman: Section 76—

Mr Haggerty: Paragraph 37.

Mr Wildman: Under the regs then.

Mr Haggerty: That will be regulations, yes; the amendment to that.

Mr Wildman: That is better, but it still does not make reference to international standards. Your standards here could indeed be Ontario standards, which might be fine—

Mr Haggerty: We are not talking about free trade, are we?

Mr Wildman: But if—

Mr Haggerty: You say international standards.

Mr Wildman: I guess our question really is, does the Ontario government accept the work that is being done at the international level or is it saying that it is not good enough or that it does not think it is going to be or what? If they are doing this work, why should we reinvent the wheel and

set our own standards? Why should we not just follow along with what they are doing?

Mr Tappenden: I could not agree with you more, Mr Wildman, that the standards that are being developed now will be extremely useful to the government in determining what provincial standards should apply. Very generally, the difficulty with putting in a provincial statute that someone must comply with international standards is that we have no control over what those international standards should be. They may be too high or too low, probably too low.

The province certainly takes this issue very seriously. We have given recent assurances to the historical groups and others that they will have considerable input into the drafting of regulations pursuant to this act which will set standards, not only for the installation and construction of monuments and markers but for the preservation and stabilization of them. We would plan to take advantage of the best possible advice that we could get in setting those standards, not only from cemeterians and structural engineers but from the international archaeological and historical groups and so on who have an interest in this.

The Chairman: Anything else on section 44?

Sections 44 to 46, inclusive, agreed to.

Section 47:

Mr Wildman: If I just could find my papers here, the question here relates to what the definition of "human remains" is in this case. As I recall, the presentation was made that in dealing with cremations, if this section also includes not only bodies that are interred, either in crypts or under the ground in plots, if it also includes ashes of cremated deceased—

The Chairman: Cremates.

Mr Wildman: —then the question is, would this prohibit someone from spreading the ashes on the waters if that was the wish of the individual expressed in a will, for instance, or the wishes of the family survivors of the deceased? Does this mean that human ashes from cremations would have to be interred in a cemetery?

Mr Tappenden: The issue of disposition of cremated remains has been the source of considerable discussion with some of the groups involved, particularly the Federation of Ontario Memorial Societies. As you have expressed, their concern has to do with wanting to bury cremated remains on their own property or something like that.

One thing I would point out technically is that section 47 is clearly restricted to interring, so if someone wants to take cremated remains in an urn and put it on his mantle, or scatter them at sea or in his garden, whatever he likes, that is not interring so that would not be prohibited.

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The risk in not including cremated remains in this section when it comes to interring is that if someone takes an urn with cremated remains and buries it in his backyard, that may not be of any consequence in the short term, but when, for example, the land owner sells that property that has his

grandfather's ashes buried in it in an urn and someone is digging in the garden one day and finds that urn with cremated remains, all of a sudden that has to be designated as a burial site and they might not be able to continue gardening.

The other problem is then that the protection of those remains is not assured because they are not in a licensed cemetery, and where do you draw the line? If they want to inter the remains of 20 relatives versus one, when does it become a cemetery? Without that restriction of saying you can only inter remains in a cemetery, we have a problem with what happens down the road.

Mr Wildman: Your interpretation is that this section really turns on the word "inter"---

Mr Tappenden: Yes.

Mr Wildman: ---so if it was the wish of an individual expressed in his last will and testament that his ashes be spread on the waters, that could indeed be done by his surviving heirs?

Mr Tappenden: That is correct.

Mr Runciman: I remember Eddie Sargent telling me about a woman who took her husband's ashes and mixed them with marijuana and smoked it and said it was the best he'd made her feel in years.

I am just curious about this point.

Mr Dietsch: I hope you are not too curious.

Mr Runciman: I think it was Lester Pearson who had the wish in his will to be buried at a particular piece of property that he owned overlooking a lake and I am curious as to whether or not there is any opportunity for someone to sort of make that kind of a special appeal to the ministry to have that kind of consideration given.

Mr Tappenden: Normally that would be done by simply designating that as a cemetery, that particular small piece of land. There are instances where family cemeteries and so on have developed just that way.

The Chairman: Anything else on section 47?

Section 47 agreed to.

Section 48:

Miss Martel: We are in the same position again as we were on section 44 in that we wanted to be assured that there would be some standards in place for stabilization and conservation which would respond to the concerns of the heritage and historical societies. We would only at this point refer back to the fact that in section 37 there have to be some definite standards and we would hope that those would be put together in conjunction with some of these groups that have the expertise, which I think none of the rest of us have, in terms of the most appropriate way to stabilize, fix, remove, repair, etc.

Mr Tappenden: I am certainly happy to make that commitment.

The Chairman: Does section 48 carry?

Section 48 agreed to.

Sections 49 and 50 agreed to.

Section 51:

The Chairman: Mr Dietsch moves that subsection 51(2) of the bill be amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding thereto the following clause,

"(d) the registrar under section 9."

Mr Dietsch: If part of the cemetery is being closed, then it should include the exempted list under the registrar.

Mr Wildman: We agree.

The Chairman: Any further comments on Mr Dietsch's amendment?

Motion agreed to.

The Chairman: Anything else on section 51?

Mr Wildman: Yes. Regarding the disinterring of human remains without consent—and this relates to questions I was raising yesterday with regard to the first nations—how will you deal with this situation if there is an Indian burial ground and the Indian band is no longer existent?

Mr Tappenden: As I understand it, the practice is that if the descendants of the relevant band can be determined from scientific study of the remains, then there would be an attempt to contact any remaining members of that particular band or nation, even if they have moved significantly in terms of geography. If it could not be determined which band—

Mr Wildman: Excuse me, just to ask a question further on that, if I could, if you are going to study the remains, then you have disinterred, have you not?

Mr Tappenden: Not necessarily.

Mr Wildman: I do not understand that.

Mr Tappenden: It is a question of whether the archaeological work is done on site or not. Some of the tests can be administered right in the field, right in the ground.

Mr Wildman: I see. So if you are doing an archaeological dig on the burial ground, that does not necessarily constitute disinterment.

Mr Tappenden: No. In fact, from my own chats with archaeologists, even without a detailed scientific examination there are often ways of determining the roots of particular remains. Sometimes it requires more detailed study in a laboratory, but sometimes it does not.

Mr Wildman: You were going to go on.

Mr Tappenden: I was going to say that if the band related to that

particular set of human remains no longer exists in Ontario or cannot be contacted or it is not clear what band those remains belong to, then the practice would be clear, and this would be established in regulation: The closest native band would be invited to participate in the discussion regarding the treatment of those human remains.

Mr Wildman: I do not want to be precious about this, but if we all recall our history, certain parts of Ontario were occupied at one time by Algonquin and Huron. Subsequent to that, people who at that time lived in what is now in northern New York state, the Iroquois nations, drove those people out of this area and occupied those lands and subsequently made agreements with the British crown to obtain lands in payment for their support in fighting against the revolution in the United States, the Revolutionary War.

I suspect if there was a discovery of a Huron burial ground, you would be in a situation of contacting the nearest band, which would be the Iroquois nation, probably the Six Nations or maybe Mohawks or somebody, who are the mortal enemies or were the mortal enemies of the Huron, and they would be telling you what to do with the Huron remains.

Mr Tappenden: That has the potential to occur quite frequently, given how long ago many of these burials occurred, but in practical terms, of the 30-or-so burials that are discovered in a year, it does not happen very frequently that there is that kind of a problem. When it has occurred in the past it is my understanding that an umbrella group, such as the Chiefs of Ontario, has stepped in to ensure that the rights of all of its peoples have been protected.

Mr Wildman: Good. That is what I was going to suggest, that you would consult, if you did not suggest that.

Mr Tappenden: And we do.

Section 51, as amended, agreed to.

Section 52 agreed to.

Section 53:

Mr Wildman: I note that you are suggesting here that a medical officer of health can attend. If it is indeed a situation involving a first nation, why do you not also put in there that a representative of the band should also be able to attend?

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Mr Tappenden: The subsection in section 53 is really to ensure public health. That is the reason for this subsection. It is a permissive subsection. There is nothing prohibitive in the statute whatsoever to stop anyone else from attending. The only prohibition that I know of in the statute which does not allow someone to attend at a burial or disinterment deals with that section of the Health Protection and Promotion Act on the disposal of corpses where it says that where the body has died of a communicable disease, and if the medical officer of health so determines, he may restrict who may attend at a burial, disinterment or funeral with respect to those remains.

But there is nothing prohibiting anyone else—a native band, other representatives of the deceased or whatever—from attending at a disinterment.

In fact, it would be the normal practice where there is a disinterment from a burial site of native remains that the band would conduct certain ceremonies as part of that disinterment, and that, to my knowledge, has not been a problem in terms of that right not being respected.

Mr Wildman: So you would normally, or the authorities would, contact the band and ask it -

Mr Tappenden: Yes.

Mr Wildman: I would hope so because otherwise you would probably have a blockade on your hands.

Section 53 agreed to.

Sections 54 and 55 agreed to.

Section 56:

The Chairman: Mr Dietsch moves that subsection 56(3) of the bill be amended by inserting after "administrator" in the first line "or for the purpose of compliance with this act or the regulations made under this act."

Mr Dietsch: It is really to address some of the concerns that were put before us with regard to crematorium owners having the authority to limit cremations taking place.

The Chairman: Why would a crematorium owner refuse to cremate?

Mr Tappenden: This is a provision in the current act, and those of us who were reviewing the act asked the very same question. It generally relates to a problem of a family dispute, whereby one son may go to the crematorium operator and say, "We want you to cremate Dad," and another son calls up and says, "Don't you dare cremate Dad. We want to have him buried," and the crematorium operator is caught in the middle. Now there are legal proceedings that one can go through to establish who is the executor and so on, but this often takes longer than one would care to take in the disposition of the human remains, and it is important that where there is a family dispute the crematorium operator has the right to refuse.

Second, where there is an implant such as a pacemaker in the body, cremating a body that has a pacemaker, and especially some of the older versions of pacemakers, can cause an explosion in the retort which can destroy a \$300,000 retort in one shot. The crematorium owner therefore has to have the right to protect his or her property by refusing to cremate if in fact those precautions have not been taken. We were concerned that the unabridged right to refuse without any qualification was clearly too broad and could be cause for discrimination on the part of a crematorium owner, so we wanted to limit that through the amendment.

The Chairman: If there is a dispute, how is it resolved?

Mr Tappenden: Typically, the crematorium owner will simply say: "Look, I am not going to do this if there is disagreement in the family. You folks go away and decide and let me know, and let me know quickly." In 99 per cent of the times it is resolved that way. If someone really wants to push it and challenge the right of the duly appointed executor who has the control over disposition of the remains, then that has to go through a legal process.

I have never heard of that happening, but normally the crematorium owner says, "You resolve it and then get back to me."

Mr Tatham: Mr Chairman, just a question. Nonflammable containers—has this taken place?

Mr Tappenden: Yes, it is a major beef that crematorium operators have, that, even knowing that a family is going to have the human remains cremated, the funeral establishment will sell the family a metal casket. Of course, metal caskets do not incinerate. That is a major problem, trying to undo a situation like that. Even things like fibreglass linings to a casket, which are not flammable, things like that, are a problem. So crematorium operators have asked us to try to establish clearly that when a body is being cremated, the family must be given a flammable container.

Mr Wildman: I was being somewhat frivolous earlier, but this is a serious question. If in questions of a death—an organ transplant, is that handled by the hospital prior to transfer to a funeral service and then subsequent internment or does it sometimes involve those people involved with the funeral?

Mr Tappenden: My understanding is that organ transplants occur well before the body is given to the funeral director.

The Chairman: Okay, is the committee ready for the question of Mr Dietsch's amendment?

Motion agreed to.

Section 56, as amended, agreed to.

Sections 57 and 58 agreed to.

Section 59:

The Chairman: Miss Martel.

Mr Dietsch: She wants to move an amendment too?

The Chairman: Oh, I am sorry. There is an amendment. Is this a complicated amendment? It is long? Five minutes.

Mr Dietsch: It is long, but I think it is pretty straightforward, as they have all been.

The Chairman: Mr Dietsch moves that section 59 of the bill be amended by adding thereto the following subsections:

"(1a) An owner may appeal, to the registrar, an order to restore within 15 days after receiving the order.

"(1b) The registrar, on receiving an appeal, shall invite submissions from the owner and the municipality and shall make such other inquiries as are appropriate in the circumstances.

"(1c) After considering submissions made and the circumstances the registrar shall confirm or reverse the order of the municipality or substitute his or her order for that of the municipality.

"(1d) The Statutory Powers Procedure Act does not apply to an appeal under this section."

Any comments on Mr Dietsch's proposed amendment to section 59? Is the committee ready for the question on Mr Dietsch's proposed amendment?

Miss Martel: Just one question. I am sorry, Mr Chairman, I am looking at this quickly. The "other inquiries," does that refer to other parties who may have an interest in terms of the nature of the repairs that are to go on?

The Chairman: Is it subsection 59(1b) you are referring to?

Miss Martel: Yes. Maybe I can outline that. It will be a little bit easier for you to answer. As I read it, you have got submissions from the municipality, which made the request for the repairs, and the owner, who for whatever reason, cannot undertake those repairs, "and shall make such other inquiries as are appropriate."

I guess the circumstance I am referring to may be where in fact the municipality has ordered all kinds of repairs on monuments which may have historical significance, in which case there would be concern about the extent, who is going to be paying for them and whether they should be undertaken or not. I wonder if it is broader than the two groups I see here.

Mr Tappenden: It would generally be where the registrar had reason to believe that the municipality was expecting too high a standard, whether it was with monument restoration or in the care of the grounds, or whatever. If it was felt that the request was somewhat arbitrary and excessive in terms of the demands of the cemetery owner, it would be up to the registrar to talk to either other cemeterians or professionals in the engineering field to clarify, to get whatever professional advice he needed in order to make a reasonable determination as to whether the municipality's requests were reasonable and fair and appropriate. It would include situations such as you have suggested.

The Chairman: Anything else on Mr Dietsch's amendment?

Motion agreed to.

The Chairman: Anything else on section 59?

Mr Wildman: It says "a municipality may order a cemetery owner" etc. What happens in an unorganized area?

Mr Tappenden: This tends to be a fallback to all of the other requirements in the statute whereby cemetery owners—I think it is under section 44—are required to maintain the cemetery in good order, whether or not the municipality tells them to. We have inspectors who go around from time to time and inspect cemeteries to ensure that those standards are maintained.

What this does is it allows the municipality to intervene, where there is a municipality, in order to encourage the cemetery to keep up its grounds over and above the enforcement and inspection by the province. I guess in the case where there is no municipality, the burden falls on the government to ensure that the cemetery does what it is supposed to do under the statute without the assistance of the municipality in enforcing that.

Mr Wildman: That is what I was going to ask. Can the provincial

government do what the municipality can do under subsection 59(2)?

Mr. Cooper: If I may, I think section 61 would cover it, where, "The registrar may require any owner who has an interest in a cemetery that appears to be abandoned or neglected to maintain that cemetery as a condition of retaining a licence."

The Chairman: Anything else on section 59?

Miss Martel: Just one point which concerns the question of reasonable time again: I will only point out that there were some concerns expressed to us in terms of if you were making repairs, in particular on tombstone markers with historical significance or otherwise, that there be a certain time in which they could be carried out. Given that, if you are trying to do some of that work in winter, you may be causing more damage than otherwise you would. I will just put that to you at this point.

The Chairman: Shall section 59, as amended, carry?

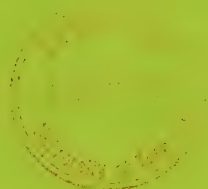
Section 59, as amended, agreed to.

The Chairman: This would be an appropriate time to recess. We shall commence again at 2 pm.

The committee recessed at 1203.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989

WEDNESDAY 4 OCTOBER 1989

Afternoon Sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Haggerty, Ray (Niagara South L) Mr McGuigan

Lupusella, Tony (Dovercourt L) for Mr Brown

Pelissero, Harry E. (Lincoln L) for Mr Lipsett

Runciman, Robert W. (Leeds-Grenville PC) for Mrs Marland

Clerk: Mellor, Lynn

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Tappenden, Eric, Director, Business Regulation Branch, Business Practices
Division

Cooper, Jerry M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 4 October 1989

The committee resumed at 1402 in room 230.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT, 1989
CEMETERIES ACT, 1989
(continued)

Consideration of Bill 31, An Act to revise the Cemeteries Act.

The Acting Chairman (Mrs Stoner): I call the meeting to order. We have just completed section 59 and are moving on to section 60.

Mr Wildman: Have we completed—I thought we had just—

Clerk of the Committee: No, we finished 59.

Mr Dietsch: So are we dealing with section 60?

The Acting Chairman: Yes, we are.

Section 60:

Mr Dietsch: I have a resolution.

The Acting Chairman: Mr Dietsch moves that section 60(3) of the bill be struck out and the following substituted therefor:

"(3) An application under subsection (2) must give notice of the application to the other persons referred to in subsection (2)."

Mr Dietsch further moves that section 60 of the bill be amended by adding thereto the following subsection:

"(4a) Despite subsection (4), an owner who makes an unsuccessful application is responsible for the costs referred to in subsection (4)."

Mr Dietsch: Basically, we are responding to the points that were raised by municipalities. It is to provide for the section to require persons making applications to the court to have the cemetery declared abandoned notify both the registrar and the other statutory parties.

Motion agreed to.

The Acting Chairman: Any further discussion on section 60?

Mr Wildman: Yes, I have. I have a question with regard to subsection 60(4). It says, "The municipality is responsible for the cost of an application...." Why? Why not the applicant?

Mr Tappenden: There is a further amendment planned which deals with the issue of costs. I am sorry, I do not know if Mr Dietsch read this or if he only read the first part of the amendment to section 60.

Mr Dietsch: Just the first part.

Mr Tappenden: His next amendment would deal with the cost issue, which says that if there were an unsuccessful application—

Mr Dietsch: I am sorry, it was read and it was passed.

The Acting Chairman: Yes.

Mr Wildman: Okay, but why just an unsuccessful one? Why not a successful one, too?

Mr Tappenden: Well, normally such an application would only be brought where the municipality has refused to accept its responsibility for an abandoned cemetery voluntarily.

Mr Wildman: Oh; all right.

Mr Tappenden: A court order would only be sought where there is some dispute. If it is a successful application and they are deemed responsible, then they will pay. The amendment that was passed, forgive me, allows that where it is unsuccessful, the municipality does not have to pay; the applicant would have to pay.

Mr Wildman: All right.

The Acting Chairman: Any further discussion on section 60?

Mr Wildman: Yes. I have raised this a number of times, and I will not belabour it, but what happens if you do not have a municipality?

Mr Haggerty: Perhaps I can be of some assistance to you. I have had ministry staff take a look at your question raised this morning about the local services boards. The information I have is that local services boards look after and have responsibility for water supply, fire protection, garbage collection, sewage, street or area lighting and recreation. There is nothing mentioned about cemeteries in that particular area, but staff have assured me that they will take another look at this. They would not like to make a commitment at this particular time until they have consulted with the Minister of Northern Development (Mr Fontaine) and the Minister of Natural Resources (Mrs McLeod), but there is the possibility that it could be included in regulations, or maybe in the act itself. But they are taking a look at it.

Mr Wildman: Okay, I appreciate that. I would think, though, that if you were moving in that direction, you would have to amend the Local Services Boards Act.

Mr Tappenden: The opportunity here, I think, exists that we would not necessarily have to amend the Cemeteries Act but the act that governs the establishment of—

Mr Wildman: That is what I said.

Mr Tappenden: —local services boards and/or the regulations which prescribe what services they may be funded to deliver.

Mr Wildman: But in that act it sets out what services are allowed.

Mr Tappenden: Legal counsel is snapping his fingers.

Mr Cooper: The Local Services Boards Act provides regulation-making authority to add to those lists of powers that local services boards have. It is in the last section of that act.

Mr Wildman: You see, the problem we have is that legislators are often faced with this kind of situation in dealing with one type of legislation when they are told that, "Well, there is another piece of legislation that governs this problem and we will consult with it," and then nothing ever happens.

Mr Cooper: When you raised the issue, Mr Haggerty mentioned that maybe local services boards could be the mechanism. It is an area that we had not explored, and I think, looking at the way the legislation is structured, it is worth while exploring to see if local services boards in areas without municipal organization could have a role to play in looking after and maintaining abandoned cemeteries.

Mr Wildman: I appreciate that. I am just wondering how quickly the wheel of government will turn on this.

Mr Dietsch: Very fast.

Mr Wildman: Perhaps Mr Haggerty can make a commitment to report back to the committee by a certain date.

Mr Haggerty: I suppose we could, after we get some additional information in this area. If we see that it is possible that we can work it through the local services boards and the ministry responsible for this particular area, then we can perhaps get some direction that maybe there should be amendment by regulation to that.

As soon as we can obtain the information that is required—we will have to review the questions raised here—then the minister will be responding.

Mr Dietsch: I am just curious with respect to the constant approach of this being brought up. I guess I would have to wonder: Is the member aware of particular difficult areas that are being encountered now, or is it a long-term concern?

1410

Mr Wildman: The first time I raised this, I said it was not a big problem across the province. I know in my constituency where I have, I think, between 20 to 30 municipalities, about two thirds of the riding is unorganized, municipally. There are three abandoned cemeteries that I am aware of in that unorganized area, and in most of those cases the neighbours have voluntarily tried to work out something for maintaining them. But they have had a very difficult time getting any funding. One group came to me and said, "It would be nice if we could get some money to purchase a lawn mower." They are not talking about big amounts of money. There was another case where there was significant damage to monuments and they thought it would be useful if they could get some financing to rehabilitate the monuments.

The Ministry of Natural Resources is not obligated. They could, but if anybody knows the current financial situation of the Ministry of Natural Resources, it does not have a lot of money for discretionary matters like this. They do not have enough money for three quarters of the province, as a matter of fact.

Mr Dietsch: I just think it would be wise, if those individual unorganized areas had concerns, if we sort of pointed the direction at those particular concerns. Maybe by way of written response to the minister, I think, that whole thing might be sped up considerably.

Mr Wildman: I think that Mr Haggerty's proposal is a very good one. I am just a little worried that this may then get lost in the shuffle, because it is a very small problem in terms of the overall problem we are trying to deal with in this legislation. I appreciate the suggestion that the minister will respond, so thank you very much.

Section 60, as amended, agreed to.

Section 61:

Mr Wildman: I have the same concerns that were raised by my colleague earlier with regard to section 59: that is, ensuring that the stabilization and conservation guidelines will be adequate under the regulations. I understood the response earlier that that will be dealt with in one part of section 76, so that is fine, as long as we make it clear that the government is going to take into account the standards that are being developed at the international level.

Sections 61 to 63, inclusive, agreed to.

Section 64:

Mr Wildman: I have some questions here. The inspectors: Who are they? What are their qualifications?

Mr Tappenden: We currently have in our cemeteries section in the province five regional cemeteries inspectors who are appointed as civil servants pursuant to the Public Service Act. Under the new statute they would be supervised by the registrar, and they inspect to ensure compliance with the entire act and regulations. Their focus tends to be two-fold: (1) to ensure that the cemetery is maintained physically in an effective way, and (2) to make sure that the books and records are kept in accordance with the act and regulations.

Mr Dietsch: Is it clear to understand that these would be the same individuals who would review the actual cemetery regulations that the individual cemeteries develop?

Mr Tappenden: Yes. The process frequently is that they are very busy doing actual on-site inspections and that the bylaws themselves that have to be submitted for approval by the registrar are done at the head office level. That also ensures consistency, but often the regional inspectors are consulted because of their knowledge of that particular cemetery.

The Acting Chairman: Any further discussion on section 64?

Mr Wildman: Yes; I have an amendment I would like to move to clause 64(1)(e).

The Acting Chairman: Have you got it written out?

Mr Wildman: No. Unfortunately, I do not.

I want to ensure that these tests are nondestructive. Now, I do not know

whether that is already covered, whether it requires an amendment, or whether it is adequately covered under the part of the section that says, "to determine the integrity of a structure, fence or marker." What does that mean? What do you mean by integrity, essentially?

Mr Tappenden: We are talking about the structural or physical integrity, in the engineering sense of the word: whether it does what it is intended to do and does what it is advertised to do. If, for example, a marker is meant to be upright, then one may have to conduct such tests as to determine whether it is likely to stay upright or not.

I must say, just in a very practical sense, the notion that cemeteries, as we had presented to us last week, would have people go around and push over monuments to see whether or not they are stable is something that the ministry finds as repugnant as the Ontario Historical Society does. We do not consider that a proper testing, because we believe that that in itself is a contravention, certainly of the new statute, and an inspector would never do something that would contravene other parts of the statute.

I do not know all of the professional details of how these kinds of tests are undertaken, but clearly these are meant to be constructive and not destructive in nature. It is to assure the integrity of these things, not to push them over. In the case of the Vandescheur inquest, where a little girl was killed by a monument that toppled over, we had at least one cemetery where they literally did go around and push over all the monuments. We do not consider that an acceptable reaction, or an acceptable set of actions. I can assure you that no inspector working in this branch would ever be involved in those kinds of activities.

I believe that the check and balance there is that other parts of the statute talk about the responsibility for markers and so on, and upkeep and care and maintenance of the markers, and pushing them over would clearly be, in my view, contrary to the spirit and the letter of this act. An inspector would simply not be involved in that sort of thing.

Mr Wildman: I could accept your explanation, except that I look at clause 64(1)(f).

Mr Tappenden: If clause 64(1)(f) is taken as related to clause 64(1)(e), I can understand your concern. Clause 64(1)(f) really deals largely with soil samples, where they are talking about grading and water flow and so on, and is there to deal with the issue of taking soil samples and so on, on a cemetery site.

Mr Wildman: Okay, then I would ask: Why does it not say soil samples?

Mr Tappenden: I am just giving that as the normal example. If a marker had to be removed for testing of some sort or another or had to be removed to drill dowel holes so that you could have dowelling placed in the foundation of the marker to make it stable, that would not be a normal occurrence. But that is a possibility, and that is something that the cemeterian and the rights holder would have to be involved in discussing.

Mr Wildman: I appreciate the explanation that has been provided, but I really do think that clause 64(1)(e) appears to me to be adequate considering the explanation, but clause 64(1)(f) then calls into question the meaning of clause 64(1)(e), in my view. If it is to test footings or to test soil and drainage, then in my view, clause 64(1)(f) should say that. It should

not just say "materials or substances," because that could be open to the interpretation that you could take markers or parts of markers in order to test them somewhere else.

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Mr Cooper: If I just might add to Mr Tappenden's explanation: All of the powers of an inspector are subject to the opening words and limited to the purpose of ensuring compliance with the act and the regulations. They cannot act outside of the scope of the act and regulations. When they do something, then it has to be related to a specific provision of what is in the act or regulations.

Mr Wildman: Exactly, and that is why I am suggesting that the provisions should be specific.

Mr Tappenden: Theoretically, clause 64(1)(f) could refer to the removal of human remains. It could refer to any kind of a substance or material on cemetery property.

Mr Wildman: Exactly.

Mr Tappenden: The point is that that is only undertaken where there is a need to do that, and I am just not aware of any circumstances where people would unduly remove items or remains of historical significance. In fact, they would be prohibited from doing so if the site were designated as a heritage site under the Ontario Heritage Act. I just do not think there is a threat to historical markers or remains there at all, either in the intent, the wording or the implementation.

Mr Wildman: I certainly understand the goodwill of the ministry in this regard, but I also understand that we had at least one example that is being alluded to here of an overzealous reaction to a serious problem which led to the destruction or damage of a large number of markers, and I think we should be ensuring that the wording is such that that cannot happen.

I would suggest that if we cannot deal with this in any other way, we should vote on each clause of subsection 64(1) separately.

The Acting Chairman: Do you not have an amendment then?

Mr Wildman: No, I do not. I am just going to vote against that.

Mr Dietsch: You want to vote against that section, is that what you are saying?

Mr Wildman: I do not want to vote against the rest of them, but I want to vote against that one.

The Acting Chairman: Okay, all those in favour of clause 64(1)(a)?

Mr Wildman: You can carry them to clause 64(1)(e).

The Acting Chairman: Okay, all those in favour of clauses 64(1)(a) to (e)? Carried.

All those in favour of clause 64(1)(f)? All those opposed? Let the record show that Mr Wildman is opposed to clause 64(1)(f).

Sections 64 and 65 agreed to.

Section 66:

Mr Wildman: We again raise the question of public interest here, which is alluded to in a number of key places in the bill. I can understand if this were just simply saying "the proper care and maintenance of a cemetery," but adding in there "something that will jeopardize the public interest," leaves it open to very wide interpretation. I am just wondering what other things other than improper care or lack of maintenance the government is hoping to catch by putting in this phrase.

Mr Tappenden: An example would be that if a cemetery had a significant amount of money in trust, not in the care and maintenance fund, but in the preneed insurance fund—that is for prepaid burials—and based on evidence we had reason to believe that a defalcation was about to occur or had occurred, and in order to protect the consumers who had prepaid those moneys and ensure that there was money there to deliver the services contracted for that we needed to freeze the assets of the cemetery, then this would give the power to the director to do that expeditiously.

I should just comment that this kind of section about freezing assets exists and is relatively broadly defined in all of our regulatory statutes for eight or nine other sectors and the powers are virtually identical, with the exception of where we identify something specific like the proper care and maintenance of a cemetery.

This is not a section that is invoked very frequently, but is an extremely important power to have when it is required in order to protect public funds.

Mr Wildman: Okay, I understand that. This does not then catch the concerns that were raised by the heritage organizations specifically, but you are talking mainly about financial situations.

Mr Dietsch: No, the care and maintenance.

Mr Tappenden: No, the definition is very broad. If, for example, we had reason to believe that someone was about to destroy a cemetery which was designated as a heritage site, not only would that be an offence under the Ontario Heritage Act, but it would also be possible, although unusual, under this section for the director to freeze the assets of the cemetery—not just the financial assets, but the physical assets as well.

Mr Wildman: Thank you, I appreciate that. I would, though, like to make that explicit, so I will move an amendment.

The Acting Chairman: Mr Wildman moves that subsection 66(1) be amended by adding the words "the preservation and heritage conservation" immediately after the word "jeopardize."

Mr Wildman: That is just to make it explicit.

The Acting Chairman: So the section then reads: "If the director has reasonable and probable grounds to believe that the owner of a cemetery or crematorium is doing or is about to do something that will jeopardize the preservation and heritage conservation of the cemetery, the public interest....," etc.

Mr Wildman: So basically, it is just to put explicitly in writing, in the section, what Mr Tappenden explained was one of the reasons for what the phrase "the public interest" might mean. So this is just to elaborate on what it does mean.

Mr Haggerty: But is not the section there now explicit in the determination and the directions that we are heading for under this particular bill?

Mr Wildman: I think it was open. I had to ask Mr Tappenden what "public interest" meant and he explained it very well, and I am just trying to do it in writing in that act. That is all.

Mr Haggerty: I believe there is a section under the regulations that also covers it.

Mr Wildman: I will not get into this discussion any longer. We have had it in other committees. I always prefer to put things in the act where we can, rather than have it in regulations and to have some well-meaning and hardworking bureaucratic gnomes writing regulations, when we, as legislators, should be doing it in a public way before the people of the province, rather than having people working behind closed doors writing regulations.

Motion negatived.

Sections 66 and 67 agreed to.

Section 68:

Mr Wildman: Can I ask a question?

The Acting Chairman: Okay.

Mr Wildman: "No person shall disturb or order the disturbance of a burial site," and so on. The change in the first definition in the act that was passed by this committee: Does this then ensure that aboriginal sites are protected?

Mr Tappenden: I am sorry, Mr Wildman. The definition you were referring to was the definition of—

Mr Wildman: "Burial site," right at the beginning. We changed it. We moved an amendment.

Mr Tappenden: Yes; I think that the application of that definition throughout having been changed, that would go some distance to satisfying the representations by the aboriginal peoples.

Mr Wildman: All right.

The Acting Chairman: So that is accepted as being in.

Mr Tappenden: Yes.

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Sections 68 to 70, inclusive, agreed to.

Section 71:

Mr Dietsch: I move that clause 71(2)(b) of the bill be amended by striking out "Canada's aboriginal peoples" at the end thereof and inserting in lieu thereof, "the aboriginal peoples of Canada." It is basically to fall in line with the Indian bands' representation that they made before us.

I also move that clause 71(2)(c) of the bill be amended by striking out "Canada's aboriginal peoples" at the end thereof and inserting in lieu thereof, "the aboriginal peoples of Canada." It is the same thing.

Mr Wildman: I support the amendment. I think the original wording was condescending and patronizing.

The Acting Chairman: That is why it was changed.

All those in favour of the amendment to (b)? Carried.

All those in favour of the amendment to (c)? Carried.

Mr Wildman: I have a couple of questions on this section as it is drafted. Earlier on, when we were dealing with the bill, the question of "approved" was indicated in section 1—that is, the first amendment we dealt with when we were dealing with the bill in section 1. The chiefs of Ontario had pointed out that a burial site indeed could have been approved by a band or the members of a first nation, a chief and council, but the way it was worded in this bill suggests that an unapproved burial site really should specify "unapproved" by the operation of this act or its predecessor. I am just saying: Can we not amend this section to do the same? In dealing with this, you are talking about an unapproved aboriginal people's cemetery. If you are going to change it in the first, you should change it here too.

Mr Tappenden: I wonder whether we could just have a moment for our legal counsel to consider that matter. The wording of these sections of the bill has been gone over in some considerable detail with the chiefs of Ontario and that has resulted in some of the amendments that have come forward. It seems to me that we ought to be consistent, but I just want to find out from those involved in the consultation whether that matter was discussed with the chiefs: if it is of concern to them.

Just while you are doing that, the same thing applies to section 72 as well.

Mr Cooper: Just to follow up on the comment, I think the same reasoning that was given to change the definition of "burial site" would apply here. Perhaps we could work in a definition saying that for purposes of this section, "unapproved" means unapproved in accordance with this act or a predecessor of this act.

Mr Wildman: Yes, that would then be consistent.

Mr Cooper: Yes, I think that would be consistent and the same rationale that applied in the definition of "burial site" would apply here.

Mr Wildman: Would that also then apply to section 72, the next section?

Mr Cooper: I have not read that far.

The Acting Chairman: I think a situation where we reopened section 1 and the definitions would be most appropriate, according to Mr Cooper.

Mr Wildman: I think we did move the amendment in section 1. All I am suggesting is that we make these sections consistent with the amendment we passed on section 1.

The Acting Chairman: Mr Cooper would like a few minutes.

Mr Wildman: Perhaps we then could stand down this section and the next section.

Sections 71 and 72 stood down.

Sections 73 and 74 agreed to.

Section 75:

The Acting Chairman: Mr Dietsch moves that subsection 75(2) of the bill be struck out and the following substituted therefor:

"(2) Subsection (1) applies with respect to the alteration or removal of the remains or a marker of a Canadian or Allied veteran only if the Department of Veterans Affairs (federal) contributed to the cost of the interment."

Mr Dietsch: It is basically to provide a more specific application to the subsection and clarify the reference to the Department of Veterans Affairs.

Mr Wildman: I am sorry, I cannot locate my copy of it. Do you have another copy so that—

The Acting Chairman: Here.

Mr Wildman: Thank you. Okay; fine.

Motion agreed to.

Section 75, as amended, agreed to.

Section 76:

The Acting Chairman: Mr Dietsch moves that subsection 76(1) of the bill be amended by striking out paragraph 28.

Mr Dietsch: Basically, paragraph 76(1)28 is redundant because it is already the same wording as paragraph 76(1)21.

The Acting Chairman: So it is.

Motion agreed to.

The Acting Chairman: Shall section 76, as amended, carry?

Mr Wildman: Did we have an amendment to—I thought there was another one to paragraph 76(1)37.

The Acting Chairman: Okay, sorry.

Mr Dietsch moves that paragraph 37 of subsection 76(1) be amended by striking out the words "construction and installation" and inserting in lieu thereof the words "construction, installation, stabilization and preservation."

Mr Dietsch: It is basically to clearly demonstrate the intention of making the regulations regarding preservation.

Motion agreed to.

Mr Wildman: I have a couple of questions with regard to the arbitration sections. Paragraphs 76(1)45, 46, and 47: Where are you at in terms of drafting these regulations on how this arbitration system will work?

Mr Tappenden: We have had an interministry committee which has been working for some time on this whole issue of dealing with burial sites. The committee has made several sets of recommendations over the last two years.

Recently, within the ministry, we have drafted a set of procedures, not in the form necessarily in which they would be contained in regulation, but a set of procedures as to how this might work. The rationale for drafting that was to use it in our consultation process with the affected groups such as the native groups and such as the Ontario Archaeological Society, with which we have shared that in its draft form. It would be our intention, after concluding that consultative process, to then sit down and formally try to draft the regulations for further discussion and for submission.

Mr Wildman: Fine; thank you.

Section 76, as amended, agreed to.

Mr Dietsch: I want to move back to section 71.

Section 71:

The Acting Chairman: Mr Dietsch moves that section 71 of the bill be amended by adding the following subsection thereto:

"71(3) For the purposes of this section and section 72, 'unapproved' means 'not approved in accordance with the act or a predecessor of this act.'"

Mr Dietsch: That will handle sections 71 and 72, I have been assured.

The Acting Chairman: So we really have an amendment to section 71.

Mr Dietsch: Right.

Motion agreed to.

Section 71, as amended, agreed to.

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Section 72 agreed to.

Section 77 agreed to.

Section 78:

Mr Wildman: I have a question with regard to section 78. I cannot understand why we are changing the way we deal with vandalism. It sounds to me as though you are just talking about recovering the cost of repairing the damages done by vandals, which I think is a good idea, but why is that all? If someone wantonly goes in and destroys markers or whatever, why is that person not also going to be subject to prosecution?

Mr Tappenden: The point you raise is a good one. Vandalism is an increasing problem in cemeteries across the province and the cost to a cemetery is increasing in dealing with vandalism to restore things back to the original condition, to the extent it can.

In effect, what we have done is not detract from dealing with the problem of vandalism, but we have tried to enhance that. In the previous statute, vandalism was an offence under this act. I believe the fine currently is somewhere between \$4 and \$40. The act of vandalism can also be an offence under the Criminal Code, and we have been advised by legislative counsel that to place it as an offence under this act is somewhat redundant: that it is already an offence that can be dealt with and prosecution can occur.

What we have done is go one further and say that not only can you prosecute and fine under the Criminal Code where vandalism occurs, but it is important to us that there be a process whereby the cemetery owner has the right to try to get a court to order some restitution to the cemetery and have some civil right to that recovery, in order that the money not just go into the consolidated revenue fund as a result of a fine, but go directly to the cemetery to help fix the monuments, the fence or whatever else has been damaged. We believe that far from backing off of the issue of vandalism, we have tried to enhance the ability to deal with it.

Mr Dietsch: I would like to know how this would fall in line in relation to cemetery owners under their own particular bylaws in operating within the confines of their bylaws. For example, cemetery plot owners will, from time to time, plant bushes and shrubs that over a period of time grow to a substantial size, and cemetery owners, for maintenance purposes, will cause those bushes or shrubs to be removed.

I have a bit of a problem in understanding how the last part of this particular clause will affect, as it says, "the cemetery owner and any interment rights holder who, as a result, incurs damage." I would see the bylaw as somewhat causing damage if you are coming in and removing some of these bushes or shrubs that have overgrown. Can you address that point?

Mr Tappenden: You raise an interesting question. I would think that in the normal course of maintaining the cemetery, when a tree grows to such a size that it may be a threat to public safety or the beauty of the cemetery, it may have to be chopped down and removed. We certainly had not intended that that would be a problem or an offence under this section.

Mr Dietsch: By the wording that is in this section, though, it does draw attention to those cemetery owners. It may not be a tree; it may be a sizeable shrub that was planted when grandpa died 25 years ago, and now through ongoing lack of maintenance—I can tell you from experience that it becomes very difficult to deal with individuals who own those plants and plots at that time.

Mr Tappenden: I appreciate the advice that my staff has given. Cemetery owners do actually remove trees or shrubs or trim them or alter them, whatever, under cemetery bylaws. We require a 90-day notice to the lot owner for this to occur. So if a lot owner had a tree planted as a commemorative marker and the cemetery owner wanted to do something with that, there would be a provision for a 90-day notice to the lot owner.

Mr Dietsch: I do not want to press the point but I want to draw attention to the fact that, for example, in cemeteries, the ownership that is left in the family may not be able to be determined. Therefore, notice of any sort will not justifiably be given because of lack of knowing where the owners now are. I am just wondering if we should not be looking at the inclusion, perhaps, of the wording in relationship to this section not overriding the bylaws of the cemetery.

Mr Cooper: The issue of what constitutes damage would have to be determined. But I think we can look at it, and if there is going to be any overlap we can cover it by a specific exempting provision in the regulations—your favourite phrase.

Mr Dietsch: I do not really have any difficulty with dealing with it that way. I want to flag it as a proper concern.

Section 78 agreed to.

Section 79:

The Acting Chairman: Mr Dietsch moves that subsection 79(6) of the bill be amended by inserting after "36(3)" in the second line "or section 68."

Mr Dietsch: It really extends the time to initiate prosecutions where persons disturb burial sites.

Mr Wiseman: For obvious reasons.

Mr Dietsch: I would not even move it if it was not reasonable.

Motion agreed to.

Section 79, as amended, agreed to.

Section 80 agreed to.

Section 81:

Mr Wildman: I have a question on section 81. How can a municipality expropriate land outside of its boundaries?

Mr Pelissero: They are considered unorganized territories.

Mr Wildman: That is just what I am getting to. They can annex but can they expropriate?

Mr Tappenden: In fact, I was sure that question was going to be asked today so we did some homework on it.

The understanding I have is that the reason that municipalities are given the power to expropriate outside of their own municipality is twofold.

One, where a cemetery cuts across a municipality boundary and is half in each municipality, it is far easier to deal with if one municipality takes the lead and it deals with that issue. The second is in dealing with unorganized territories where those exist outside of the bounds of the municipality.

I should say that this section has been raised by some folks as being perhaps redundant because of the powers that municipalities have to expropriate, generally, under either the Municipal Act or the Planning Act. I forget which.

We were advised by legal counsel at the Ministry of Municipal Affairs that to simply leave this section out because it exists in the current Cemeteries Act may be problematic in the event that there was a court challenge. A court may interpret the removal of the section from this act as somehow limiting the power to expropriate with respect to cemeteries, and they advised us to leave it in there.

Mr Wildman: One of the reasons I raise this is that I do know for certain that quasi-municipal organizations in unorganized areas, such as local roads boards or local services boards, do not have the power to expropriate. It is in the law that the provincial government could expropriate land on their behalf, but I am told by legal counsel that that has never been done. I was wondering why.

Mr Tappenden: Just as a point of interest: In this case, to date, although the current Cemeteries Act has been in place since 1913, the only expropriation we are aware of under this section is going on right now, so it is not a common occurrence that this particular section of the act is invoked.

Section 81 agreed to.

Sections 82 to 86, inclusive, agreed to.

Section 87:

The Acting Chairman: Mr Dietsch moves that section 87 of the bill be amended by inserting after "over" in the first line, "part VI of."

Mr Dietsch: Really the reason is to fall in line with a lot of the discussion that we have been having with respect to the Ministry of Culture and Communications. They have suggested this as a way to deal with the heritage question.

Mr Wildman: Could you tell us what part VI actually does?

Mr Tappenden: Part VI of the Ontario Heritage Act deals with archaeological sites, I believe. Essentially, where there is a dispute between the rights of the representatives of the deceased and a scientific group wishing to undertake study, this override provision would allow the rights of the representatives of the deceased to override any scientific interest that may occur.

The sections of the heritage act dealing with designation of sites as heritage sites by municipalities, I believe, are sections 4 and 5, and it was considered appropriate by the government not to have the override extend to those sections.

Motion agreed to.

Section 87, as amended, agreed to.

Sections 88 to 91, inclusive, agreed to.

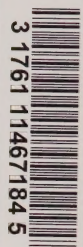
Mr. Haggerty: On behalf of the minister, I want to extend my appreciation to all the committee members, in particular the staff of the Ministry of Consumer and Commercial Relations for their attendance and their knowledge and wisdom in this particular area, to help process these two bills before the committee. I just want to say thank you.

Title agreed to.

Bill, as amended, ordered to be reported.

The committee adjourned at 1453.

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